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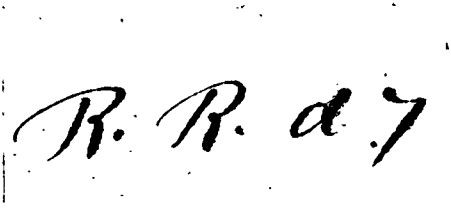
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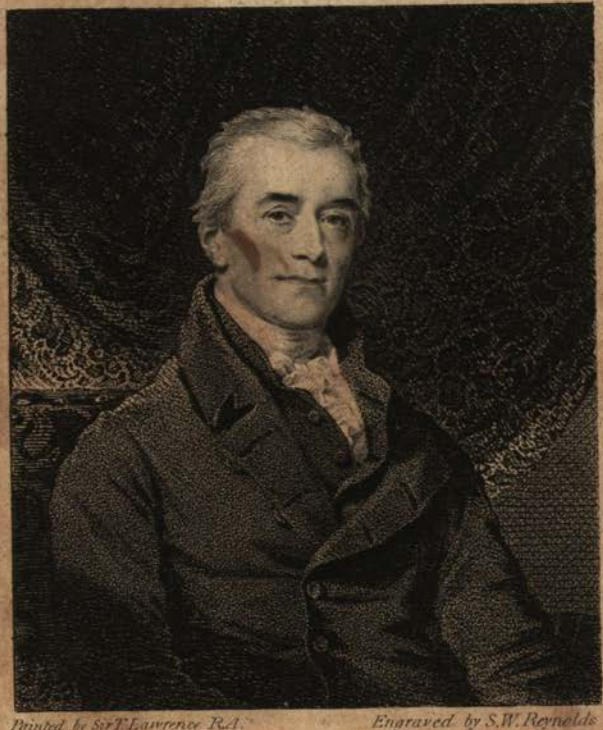

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Sir Samuel Romilly.

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THE

SPEECHES

SIR SAMUEL ROMILLY

IN THE

House of Commons.

IN TWO VOLUMES.

VOL. I.

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LONDON:

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ADVERTISEMENT.

ANXIOUS to pay the only tribute of respect and affection, which it is in my power to offer, to the memory of a great and good man, as well as to diffuse those enlightened principles on which he laboured for the liberty and happiness of his fellow-creatures, I venture to present these volumes to the public eye. In doing so, I can assure the reader that no exertions have been spared on my part to render them, in some degree, worthy of the name to which they belong.—But though I have endeavoured to avail myself of every accessible source of information,—though I have carefully examined and compared the various reports of the several speeches, and selected, in every instance, from such as I thought most deserving of preference on account of their apparent fidelity,—still I regret to say, that many of them are but faint outlines, or fragments, of their originals. Imperfect, however, as these are, and incapable of adding to the reputation of Sir Samuel Romilly, they may yet perhaps, by the pure and generous sentiments which they breathe, be accessary to the first object of all his actions—that of being useful to mankind.

To the friends who have so kindly assisted me in this undertaking, and especially to Mr. Basil Montagu, and Dr. Roget, I take this opportunity of expressing my sincere gratitude.

WILLIAM PETER.

1810. *Navigable River Robbery Bill* .. Page 284
The King's Illness 292
1811. *The Regency* 296
Mr. Pitt 311
Criminal Law 315
Stealing in Bleaching Grounds 322
Stealing in Bleaching Grounds 325
Appeals in the House of Lords, &c. .. 327
Spilsby Poor Bill 330
Informations ex Officio 335
Stealing in Dwelling Houses 339
Printers' Bill 356
Delays in Chancery 359
Petition of Mr. Finnerty 362
1812. *Police of the Metropolis* 365
Ecclesiastical Courts 372
Repeal of the 39th of Eliz. 379
Military Flogging 380
Catholic Question 389
Parliamentary Reform 410
1813. *Vice Chancellor's Bill* 414
Criminal Law 425
The Princess of Wales 436
Criminal Law 444
Punishment for High Treason 461
Ecclesiastical Courts 479

A

MEMOIR

OF

SIR SAMUEL ROMILLY.

SAMUEL ROMILLY was born on the 1st day of March, 1757, in Frith Street, Soho, Westminster, and was the youngest of nine children.

His family was of French extraction, and had enjoyed for many generations a considerable landed property in the neighbourhood of Montpelier, which was abandoned by his grandfather after the revocation of the Edict of Nantes. Proscribed by a bigoted and arbitrary government for his adherence to the doctrines of the reformed religion, this excellent man resolved to tear himself from his birth-place and his friends, and to seek a country where he might worship God after the faith of his fathers, and the dictates of his own heart. The land of his choice was England—then happily an asylum to the victims of oppression in every quarter of the world. There, with few means of support beyond his own exertions, he embarked in trade,—educated his sons to similar occupations,—and was contented, at his death, to leave them, instead of his original patrimony, no other inheritance than the example of his own industrious habits and virtuous life, an hereditary detestation of tyranny and injustice, and an ardent zeal in the cause of civil and religious freedom.

Peter Romilly, his son, was bred a jeweller in London, where he acquired a moderate fortune with the esteem and good-will of all who knew him. His wife was a lady of the name of Garnault, the descendant of a French family, which, like his own, had been indebted to this country for a refuge from religious persecution. Of nine children, the fruits of this marriage, only three attained the age of maturity. These were Thomas, Catherine, and Samuel.

Samuel Romilly was early distinguished for extreme vivacity and sprightliness of temper, qualities not uncommon to childhood, but remarkable in him from the strong alloy of anxiety and nervousness, with which they were occasionally depressed. The indisposition of a relation or friend,—the absence of his father beyond his usual hour of return at night, and various little incidents, generally unnoticed or disregarded by the happy thoughtlessness of youth, would occasion him the most serious uneasiness,—setting his imagination at work to anticipate the worst results, and to conjure up a thousand phantoms of improbable danger. This disposition, though subsequently tempered by years and reflection, was never perhaps wholly subdued.

Of his education I have been able to learn little more than that he was for some years at a day-school of an inferior description in his father's immediate neighbourhood, where he continued till he was about fourteen; after which he had the occasional assistance of a private instructor in classical learning. But it was principally to *his own* exertions—to his own unwearied industry and application, guided and assisted by one who had the means of discerning and appreciating his character, that he was indebted for the successful cultivation of those powers which were the foundation of his subsequent greatness. This director was the Rev. John Roget, a friend endeared to him no less by congeniality of taste and disposition, than by being the husband of his amiable and beloved

sister. The benefits which his youth derived from the judicious advice and example of this able and virtuous counsellor were ever acknowledged by him with unvarying gratitude and affection.

Mr. Romilly having been originally designed by his father for the profession of an attorney, was placed under a respectable gentleman in the Six Clerks' Office of the Court of Chancery. But the strong and decided inclination of his own mind had always been towards the bar,—an inclination in which he was happily encouraged and confirmed by his friend Mr. Roget. Accordingly, on the 5th of May 1778, being then in his twenty-second year, he entered himself at Gray's Inn, where he continued to pursue his labours with equal ardour and perseverance until the summer of 1780. The fatigues, however, which he underwent during the riots, and in his subsequent drills and exercises, as a member of the Gray's Inn Association, operating upon a constitution naturally delicate, and impaired by sedentary habits and long application, produced a fever, and compelled him for a while to relinquish his severer studies. Having been forbidden by his medical attendants to look into any books but such as were merely amusing, he employed the leisure of his illness in learning the Italian language.

No sooner was Mr. Romilly in some degree recovered from this attack, than he renewed his suspended labours with even increased zeal, disregarding, in his anxiety to make up for lost time, the positive injunctions of his friend and physician, Dr. Watson. The following extracts from letters addressed by him, about this period, to Mr. and Mrs. Roget, who were then residing in Switzerland, are interesting from the picture which they present, of the habits, feelings, and character of their author.

"You ask me" (he says to his sister in a letter of the 24th of November 1780) "if the circle of my acquaintance

is as small as ever? Yes—to the full, — less, I should rather say. All the few friends I had here two years ago, are now scattered in different parts of the earth. - - - - - New acquaintance I have none. How indeed should I make them, since I am still as backward to introduce myself into company as ever?—One acquaintance, it is true, I have made since you were in England,—a friend, I ought to say, if to take the greatest interest in my concerns and to load me with unaffected civilities, can give a claim to that title. I mean Mr. Spranger, a name, I believe, perfectly new to you. He is a counsellor, under whom I have studied almost ever since you quitted England. Mrs. Spranger is one of the most amiable women I know, not very young indeed, for she has four children, but still handsome and possessing the most engaging manners. At their house, where I frequently dine or sup, though less often than I am pressed to do, I meet a good deal of company, which, consisting mostly of men of sense and education, is very agreeable.—But the most engaging society,—that, my dear sister, of your amiable sex, I seldom enjoy, for I am hardly ever of their card parties,—besides that it is not at a whist table that your sex appears in its native charms.

" With so small an acquaintance, you will easily conceive that I seek for amusement in my studies, and there I am never disappointed in what I seek.—My rooms are exceedingly lively, and capable of themselves to secure me from indulging in melancholy; so that you may discard those apprehensions which I persuade myself that I discover under your obliging inquiries. In the depth of winter, the moment the sun peeps out, I am in the country. A cold country indeed it is; for having only one row of houses between me, and Highgate and Hampstead, a north wind, sharp as your piercing *bize*, blows full against my chambers. Fortunately I am sheltered from the north-east. What renders my chambers very comfortable

is a tolerable collection of books, which, I confess, somewhat extravagantly I have lately purchased."

In a subsequent letter to Mr. Roget, he says, "You ask me how I spend my time?—In a manner so uniformly the same, that a journal of one day is a journal of all.—At six or sooner I rise, go into the cold bath, walk to Islington to drink a chalybeate water (from which I have found great benefit), return and write or read till ten,—then go to Mr. Spranger's, where I study till three, dine in Frith Street, and afterwards return to Mr. Spranger's, where I remain till nine. —This is the history of every day, with little other variation than that of my frequently attending the courts of justice in the morning, instead of going to Mr. Spranger's, and of often passing my afternoons at one of the Houses of Parliament.—Indeed I am grown as great a politician as - - - - , though it is not mine, as it was his favourite topic of conversation. 'Peace is my dear delight,' and peace and our politics are incompatible. My father is still as warm an advocate as ever for the ministry, and I as deeply affected as ever with the miseries and disgrace they have brought on the country.

"No domestic occurrence has happened in our family worth communicating to you, though we have reason to hope that one much to be desired is at hand. You know I mean that by which we shall be enabled to call our dear Jenny, whom we have long loved as a sister, by that tender name. How happy shall we be when the joyful time arrives of our being all assembled together—all to whom the endearing names of brother and sister belong. I already represent to myself our little societies meeting at each other's houses, and enjoying in each other's company and conversation those pleasures of which we have been so long debarred." - - - -

"I told you, I believe, that the - - - - were returned from their travels. The eldest son has since come of age. You naturally represent to yourself the joy with which that happy

event is celebrated, their roofs resounding with songs and shouts of exultation, and the whole family half distracted by a round of balls, concerts, banquets, and all that burdensome grandeur which the rich mistake for pleasure. Alas! how are you mistaken! All are silent, thoughtful, melancholy. The mother passes her nights in watching, and her days in anxious pensiveness. You wonder what misfortune can have befallen them. Disease perhaps dulls the relish of all their happiness, and threatens it with an early period.—No—they are all in perfect health.—Have they then lost some beloved friend, regret for whose memory saddens all their joys?—No—their misfortune is not quite so severe.—Perhaps the young heir, in disparagement of his high rank, has had the misfortune to conceive a passion for some amiable girl who would in every respect be worthy of his hand, but that she brings not an enormous portion to swell his vast wealth to twice its present bulk!—Nor is it even this imaginary evil that poisons all their enjoyments. But you lose patience.—To unfold, then, this mystery. The youngest son was by his friends designed for the lucrative profession of his father; but a liberal education, and a visit to foreign courts, have so vitiated his understanding, that he cannot resolve to devote his life to commerce; and the whole family are in despair, lest this mutinous disposition should reduce the young man to beggary, who has nothing else to depend on,—for being a younger son, his father left him only £40,000!

Horum,
Semper ego optârim pauperrimus esse bonorum."

In another letter to Mr. Roget, he says, "Use has not at all lightened your loss to me. After an absence of eighteen months I still regret as much as ever that I am debarred the happiness of your conversation. In my studies I miss you yet more; I long to consult you upon what I read, and to

read over, and take your opinion on what I write. I have lately learned Italian. Do not censure me for such a waste of time. I began to apply myself to it when I was ill, and was forbidden severer studies; and so easy is the language, that I soon began to read their prose-writers with pleasure. I have just read Machiavel's famous book 'Del Principe.' Had Cæsar Borgia, his hero, been as successful as he was cruel and profligate, he would have been exactly the unjust man, stained and polluted with every vice, whom Plato, in his Republic, proves to be miserable in the midst of his prosperity, and to whom he opposes his just man despised and persecuted. Though in the end the crimes of this monster availed him not, Machiavel does not scruple to propose him as a model for the imitation of princes, and seems to lament that his great talents could not give him the disposal of events. The picture which this Italian politician gives of human nature is the blackest ever painted; but it seems probable, that he had never travelled out of his own country; and though his acute penetration may have given him a full insight into the characters of his countrymen, he was assuredly but ill acquainted with human nature in general.

"When he says, that men are by nature hypocrites and cowards, ungrateful and rapacious, this may possibly be an exact copy of the manners of Italy, in an age just emerging from barbarism; but for a representation of the human species, how false and preposterous is it! — Princes, he says, are not to be bound by promises and oaths, for all men are perfidious; and were monarchs alone observant of their faith, they would find themselves the dupes of their own ridiculous scruples! He is the first writer, perhaps, who, regarding mankind with the eyes of a sullen misanthropy, has expressed no indignation at what he saw, and seemed well contented that things should remain as they were. Seeing men in the odious light in which he represents them, Machiavel could not but have conceived a deadly hatred against them; and if so,

his book seems to me no longer a prodigy; for in this Institute of a Tyrant he has, consistently with that hatred, set himself to arm with force and with every destructive art the most cruel scourge of mankind.

"The author of the Anti-machiavel seems to have formed his opinion of the human heart from the manners of France, as much as Machiavel did from those of Italy. Machiavel says, that no oppression of a prince will so soon draw on him the hatred of his subjects, as to rob them of their wives. The Anti-machiavelian, falling into the opposite extreme, says, that such gallantry, using the fashionable phrase of the language he writes in, never renders a prince odious. The story of Lucretia, indeed, stands a little in his way; but he dexterously removes that obstacle, by supposing the whole story a romance —a convenient mode of getting rid of the great examples of ancient virtue, when they obstruct a modern system, or remain a reproach to modern depravity.—There is, indeed, another method which surpasses even this; it is to admit the action, but to deny that it was done from any virtuous motive." - - - -

"Have you ever heard of a book published here some time since by a Mr. Howard, on the State of the Prisons in England and several other Countries? You may conjecture from the subject, that it is not a book of great literary merit; but it has a merit infinitely superior; it is one of those works which have been rare in all ages of the world,—being written with a view only to the good of mankind. The author was some time ago a sheriff in the country; in the execution of which office numerous instances of abuses practised in prisons came under his observation. Shocked with what he saw, he began to inquire whether the prisons in the adjacent counties were on a better footing; and finding every where the same injustice prevail, he resolved, though a private individual, to attempt a reform of abuses which had become as general as they were shocking to humanity. Accordingly he made a

visit to every prison and house of correction in England with invincible perseverance and courage; for some of the prisons were so infected with diseases and putrid air, that he was obliged to hold a cloth steeped in vinegar to his nostrils during the whole time he remained in them, and to change his clothes the moment he returned. After having devoted so much time to this painful employment here, he set out on a tour through a great part of Holland, Germany, and Switzerland, to visit their prisons. What a singular journey!—not to admire the wonders of art and nature,—not to visit courts, and ape their manners,—but to compare the misery of men in different countries, and to study the arts of mitigating the torment of mankind! What a contrast might be drawn between the painful labour of this man, and the ostentatious sensibility which turns aside from scenes of misery, and with the mockery of a few barren tears, leaves it to seek comfort in its own distresses!"

In the summer of 1781, Mr. Romilly had the happiness of embracing the beloved friends to whom the preceding letters were addressed. Though relaxation from labour, and change of scene and climate, had become almost necessary to the re-establishment of his health, the immediate object of his journey was to restore to their arms a child from whom they had been long separated. He landed at Ostend on the 19th of June, and after visiting Geneva, Switzerland, the borders of Italy, and the principal parts of France, returned to England about the middle of the following November, gratified and instructed, and with a stock of health and spirits, to which he had been, for several months before, a stranger. In a letter to his friends at Lausanne a twelvemonth after, he had not ceased to dwell with enthusiasm on the scenes he had visited, —on Geneva, Lausanne, Vevay, and the Grande Chartreuse,— on being "sprinkled with the dews of the waterfall near Chamberry,"—on "leaning over the parapet mentioned by Rous-

seau, and gazing at the torrent, which tumbles at a prodigious depth amidst the rocks below, and, like him, throwing down stones, to see them beat against the sides of the mountains and dash in the water."

In his letters of this period he also enters into many details respecting the little republic of Geneva, in whose fate he seems to have taken a warm interest. Two articles which he had written on the subject, appeared in the Morning Chronicle of the 8th and 9th of January 1782. Of the manners and opinions of the French people and government he frequently speaks. On one occasion he says—"In the little I have seen of the French, I have found them to be much less gay than they are commonly said to be. They are merry and serious by starts, but they are strangers to cheerfulness, and still more to serenity of temper. When Mr. De Luc was at Paris, he often observed to a Gentleman whom I am acquainted with, as they walked out on Sunday evenings, that he never saw in England that mirth and gaiety which appeared on the countenances of the French. The observation has been frequently made before, but by men of less sense than Mr. De Luc; and from thence one is to conclude that the French are a happier nation than the English, and consequently that a despotic government is preferable to a free one. I greatly doubt the happiness of the French; but if they are happy, they are more to be pitied than if they had been discontented, because, in their situation, it is not possible they can be happy, till their souls are debased to a level with their condition. Slaves must be insensible indeed to the misery and ignominy of their state, when they can hug the chains that dishonour them, and lick the feet by which they are trampled on. Such men can never taste of real happiness; to them all its genuine sources are dried up. It is ever the policy of a tyrant to enervate the minds of his subjects, and to give them a fondness for false

grandeur and empty pleasures. When he has once wrought this change in their dispositions, he may at an easy price glut them with all that they are greedy after. They will never feel the want of pleasures which they no longer have souls to enjoy. So it was in the worst days of the Roman empire; its tyrants fed a populace, whom they had rendered stupid and sensual, with offals and gaudy shows.—It is not more surprising, that a people ignorant of liberty are contented with servitude, than that a man blind from his birth laments not the want of the most delightful of the senses. I have never seen a troop of children who appeared more cheerful and contented than the deaf and dumb scholars of the Abbé de l'Epée; but ought we from thence to conclude that they are happier than we are, and that Providence, in giving us our senses complete, has bestowed on us a superfluous, if not a pernicious gift?

"At Versailles I assisted at the Mass. The service was very short, though it was on a Sunday; for kings are so highly respected in France, that even religion appoints for them less tedious ceremonies than what it enjoins the people to observe. The moment his Majesty appeared, the drums beat and shook the temple, as if they had been to announce the approach of a conqueror. During the whole time of saying mass, the choristers sung, sometimes in chorus, sometimes in single parts. In the front seats of the galleries were ranged the ladies of the Court, glowing with rouge and gorgeously apparelled, to enjoy and form a part of the showy spectacle. The King laughed and spied at the ladies. Every eye was fixed on the personages of the court, —every ear was attentive to the notes of the singers, while the priest, who in the mean time went on with the exercise of his office, was unheeded by all. Even when the Host was lifted up, none observed it; and if the people knelt, it was because they were admonished by the ringing of the bell; and

even in that attitude all were endeavouring to get a glimpse of the King.—How can a King of France ever be brought to regard his subjects as his equals, when even before the throne of Heaven he maintains so high a superiority over all around him? What an idea must he not conceive of his own importance when he thus sees his God less honoured than himself!"

"You must needs think me" (he says in a letter to his sister) "a very insipid traveller, for as yet I have given you an account of scarcely any thing I have seen since I left you. But if such accounts will afford you amusement, you have but to write me word, and we will make together a great many excursions through Paris; but we will not take Roget with us, lest, while we are gazing at its magnificent buildings, its spacious squares and extensive gardens,—at the costly grandeur of Versailles, its superb gallery, and its almost animated pictures and statues, he draw us away, and exclaim in the words of our favourite Rousseau, '*Pretendues grandeurs! frivoles dedommagemens de la servitude, qui ne vaudront jamais l'auguste liberté!*'—I know your taste for the fine arts; but to describe all the beautiful masterpieces of the best masters which I have seen in the Duc d'Orleans, and the French King's collections, would be almost an endless and I fear after all a tedious task. The living artists at Paris, in every branch except sculpture and architecture, are, I think, much below mediocrity. - - - - Have you ever heard of Houdon? He is a man of great merit, I think I may say, of great genius. I was particularly struck with two of his designs for sepulchral monuments. In one, Virtue with a serene and cheerful countenance, and Friendship with dishevelled hair and in an agony of grief, are laying the dying man in his tomb. On one side appear Envy and Calumny hovering aloof, and not daring to approach the grave, and on the other, the dignities, the pomps and follies of the

world dissolving into air.—The other is a monument for a princess of Saxe Gotha. She is represented walking in a kind of chapel. At the end is a recess with a curtain half lifted up by the image of Death, who has seized upon the princess, and is dragging her away with an irresistible arm into his dark abode. She seems resigned to her fate, and is turning a farewell look upon her subjects. In both these monuments the thoughts are noble, but they leave in the mind a sentiment of despair.—And such is the effect of what, at Paris, is called philosophy. They there boast that it has made men wiser; I am sure that it has not made them happier, than they were before. I must confess that I regret those times when Religion gave awful lessons from the grave; when she appeared, as on the tomb of Richelieu, mitigating the pangs of death; when the dead were seen rising from their sepulchres, as in one of the masterpieces of Roubillac, and the proud monuments of human grandeur mouldering away at the sound of the last trumpet!"

During his stay at Paris he became acquainted with some of the most distinguished men of letters of that period; and, among others, was introduced to D'Alembert and Diderot: the former he describes as particularly cold and reserved; the latter was much more communicative, and took some pains to impress him with a favourable opinion of his irreligious system. After the extracts from Mr. Romilly's correspondence already given, it is almost needless to say that these efforts were wholly without effect, and excited no other sentiments in the young man's mind than those of surprise and disgust.

Amongst the various subjects on which, from an early age, the active mind of Mr. Romilly never ceased to be employed, none more anxiously engaged his attention than the situation of his country, its laws, its institutions, and all its interests and relations at home and abroad. To transcribe his letters

on these topics would be to transcribe the history of Great Britain and her Colonies during the whole American war. On every question of importance he was in the habit of attending the debates of Parliament, and of transmitting to his friends at Lausanne the substance of all the arguments employed on each side, accompanied with his own remarks on the peculiar style, talents, and characters of the various speakers. The riots of 1780,—the state of parties in and out of Parliament,—the affairs of our Indian empire,—the origin, progress, and termination of the American, French, and Dutch wars—these, and other events of a similar nature, are detailed by him in animated and descriptive language.

Of the members of Administration he says,—"As Statesmen it is not easy to distinguish their characters; for no one minister has appeared to be the author of any particular measure. All that has been done, has had the apparent approbation of the whole Administration, and there are persons who go so far as to assert, that the real authors of all the proceedings against America are still behind the curtain. Of the whole Administration, however, taken together, the principal characteristics are want of system and irresolution. The latter, indeed, is but a consequence of the former. Having little, confined views, they seem never from the first to have formed any comprehensive plan, and this original defect has proportionally increased with ill success; perplexed and confounded with the mazes and dangers into which they have run, like children, they rather turn away from what affrights them, than endeavour to prevent it. They ward off the present evil that presses on them, but leave the morrow to provide for itself; and may be truly said, according to the Latin phrase, *in diem vivere*. Their plan of operations (for system they have none) changes with every new occurrence. With every various accident every various passion takes its turn to rule them. Regarding only the immediate object before them, they mag-

nify its importance, and are now confident of success, now plunged into despair. The idol they erected yesterday, is cast down to-day, and, perhaps, will be enshrined again to-morrow. —In prosperity they are proud, contemptuous, and overbearing; in adversity, supple, mean, and abject. At the commencement of the struggle with America, they treated the refractory colonists as a despicable gang of ruffians: but the moment a league was formed with France, they prostrated themselves at the feet of those *rebels* they had spurned, and offered them much more than had ever been demanded. But this panic was soon dissipated by a gleam of success; Ministers resumed confidence, and one of them was imprudent enough to hint, even in the House of Commons, that unconditional submission was alone to be listened to—*quidlibet impotens sperdre, fortunâque dulci ebrius.* Nay, but last winter, flushed with the successes of Lord Cornwallis, they were already in imagination masters of all the southern provinces, and masters so absolute, that they thought it time to send out again Lord Dunmore to chastise, not to govern, Virginia."

In a letter of the 7th of May 1782, he says, "William Pitt is this day to move in the House of Commons for a Reform in the representation of the people,—a matter most important and most desirable, but which will have formidable enemies to combat, in the dread with which narrow minds regard all innovations, however salutary, and in the interest of many great families, who certainly will not, but with the greatest reluctance, yield up that authority, both in their counties and in Parliament, which they owe to their property in boroughs."—Mr. Romilly, who was present at the debate, speaks, in animated terms, of the talents displayed by the mover, the fame of whose eloquence had drawn such crowds to the House as to overflow the gallery, and to exclude many of the newswriters. To this circumstance he attributes the very imperfect

accounts of the debate which appeared in all the papers of that period.

Considering the elective franchise in the light not of a property, but of a trust, Mr. Romilly decidedly objected to the reasons assigned by Mr. Pitt in his speech of the 7th of May 1783, for sparing the decayed boroughs and those which were the patrimony of particular families. Parliament was not, he thought, to protect men in the enjoyment of pecuniary advantages which, by law, they ought never to have possessed. Notwithstanding the immense crowds which overflowed the avenues and gallery of the House on this as on the former occasion, he laments the little interest which was awakened in the public mind by this important question. "The truth is" (he says), "that it was the eloquence of Mr. Pitt, and not the subject on which it was to be employed, that excited people's curiosity; and no doubt, the reflection which his speech produced in the minds of many of his hearers, was not unlike that which the usurer makes on the preacher in the Diable Boiteux, '*Il a bien fait son metier; allons faire le notre.*'"

To the coalition of Burke and Fox with their former antagonist Lord North, Mr. Romilly has alluded in several of his letters, in terms of bitter disappointment and regret. He had long entertained the highest admiration and respect for the two former, and he could not see unmoved a measure which, by depriving them of the nation's confidence, deprived them of the power of being useful to their country. But whilst he objected strongly to the means by which these eminent men had obtained office, he was equally opposed to all self-denying ordinances and resolutions. "You ask me" (he says in one of his letters to Mr. Roget), "whether I do not think, there may be circumstances in which an Englishman should begin his political career by a solemn engagement never to accept of any place? I think there can hardly

be any circumstances in which such an engagement would not, in a man of great abilities, be culpable. In one of an inferior capacity, it is indifferent whether he make such a declaration or not; for, though his integrity admit not of the remotest suspicion, his opinions will have little weight. We have an instance of this in - - - -, who has done exactly what you mention—solemnly professed that he will never come into office, but who seldom speaks in the House, and never commands attention.

"When a man is endowed with very distinguished talents, there can be no question that he owes the utmost exertions of them to his country; and you certainly know too much of our politics, to think that he can render his country the hundredth part of that service in opposition, that he can in administration. In politics, above all things, I think it the highest imprudence to bind one's self down to any determinate rule of action, but that *supreme rule of conforming in all things to the dictates of virtue, and the public good.* Imagine a Chatham, having, in the days of his country's prosperity, bound himself by such a vow as you allude to. Suppose, after the lapse of some years, his country brought to the verge of ruin, the ministers driven from the helm by the public indignation, and every honest man deterred by the dangers to be encountered, from venturing to take their place. What is he to do who, by the suicide of his own incomparable talents, has made himself useless to his country? A second Jephthah, he would have to choose between perjury and parricide!"—And in reference to the same subject he afterwards adds—"I very much doubt such an engagement's having the good effects you seem to expect from it. To honest minds, who cannot easily bring themselves to think that others have no nobler motive for their public actions than their private interest, it would be superfluous; whilst for the envious and suspicious it would remain, either to doubt the sincerity of

the engagement, however solemn, or to allege, as you have heard at Geneva, that, the ambition of riches and titles removed, there still continued the more captivating ambition of fame and popularity."

It was on the 2d of June 1783, that Mr. Romilly was called to the bar. The feelings with which he approached his profession are described in his letters of that period. "The nearer I approach the term which I have formerly so often wished for, the more I dread it. I sometimes lose all courage, and wonder what fond opinion of my talents could ever have induced me to venture on so bold an undertaking; but it too often happens (and I fear that it has been my case) that men mistake the desire, for the ability, of acting some very distinguished part."

In another letter he says—"It would seem, my dear Roget, by your last letter, that you thought I had affected doubt of succeeding in the way of life on which I am to enter, only to draw from you such praises as might encourage me in my pursuit.—I assure you I had no such wish, and that what I wrote to you was but a faithful transcript of what I felt. Could I but realize the partial hopes and expectations of my friends, there would be no doubt of my success almost beyond my wishes; but in myself I have a much less indulgent censor, and in this perhaps alone I cannot suffer their judgment to have equal weight with my own. I have taught myself, however, a very useful lesson of practical philosophy, which is, not to suffer my happiness to depend upon my success. Should my wishes be gratified, I promise myself to employ all the talents, and all the authority I may acquire, for the public good—*Patriæ impendere vitam.* Should I fail in my pursuit, I console myself with thinking that the humblest situation of life has its duties, which one must feel a satisfaction in discharging,—that, at least, my conscience will bear me the pleasing testimony

of having intended well, and that, after all, true happiness is much less likely to be found in the high walks of ambition, than in the '*secretum iter et fallentis semita vitæ.*'—Were it not for these consolations, and did I consider my success at the bar as decisive of my future happiness, my apprehensions would be such that I might truly say, '*Cum illius diei mihi venit in mentem, quo mihi dicendum sit, non solum commoveor animo, sed etiam toto corpore perhorresco.*'"

In another letter addressed to the same friend, on the 30th of May 1783, Mr. Romilly says—"I have often lamented your absence as depriving me of a very considerable assistance in my studies; but you are now to render me a more important and a more noble assistance. I am soon to enter on a career, which possibly (though I grant not very probably) may place me in important and critical situations,—which will certainly give me partial and selfish interests, incompatible with the good of others,—which will throw me amidst mankind, and condemn me to hear the dishonourable sentiments of which they make profession without opposing them, and to be a near spectator of their selfish and degrading conduct without discovering any detestation at it. It will, in part, depend on you to save me from the contagion of such examples. Not but that my heart recoils from them with an antipathy which seems quite insurmountable; but I have I know not what kind of terror, which I cannot overcome, of the force of habit,—of perpetual temptations,—of being familiarized with a contempt of virtue.—The best shield against them, and the best security to maintain the purity of one's virtue, is, I am convinced, the society and conversation of such a friend as yourself, whom I may consider as the pledge and deposit of all the sacred engagements which one has taken with God, with one's self, and with one's fellow-creatures."

Animated by these feelings, no less than by that honest

love of independence which was so conspicuous a feature of his character—anxious, too, to gratify the kind wishes and solicitude of his friends, and to justify in their eyes *his* choice of a profession, Mr. Romilly suffered no temptations to divert him from his purpose. Yet his early success was not adequate to his labours. A constitutional nervousness and diffidence of his own powers, by obscuring his talents and learning, could not fail to operate in some degree to his disadvantage; and for four or five years he is said to have attended the Quarter Sessions at Warwick, the different assizes of the Midland circuit, and the Courts of Equity in Westminster, with little profit, beyond those practical habits and feelings of self-possession, which observation and time gradually bestow. In 1791, however, he had attained considerable practice as a junior counsel, and in 1797 even as a leader.

Amongst those who early appreciated the rising merits of Mr. Romilly was the Marquis of Lansdowne, at whose house, both in Wiltshire and in London, he had frequent opportunities of meeting and enjoying the society of many of the most distinguished and enlightened characters of the age. It was there, too, that he first beheld HER, who was destined to contribute so largely to his future happiness, and to become, as it were, a portion of himself. To this lady, who was the eldest daughter of Francis Garbett, Esq. of Knill Court, in the county of Hereford, he was united on the 3d of January 1798.

In 1799, Mr. Romilly's practice in the Court of Chancery, which had now become very considerable, was still further augmented by the elevation of the Attorney General, Sir John Scott, to the Chief Justiceship of the Common Pleas; and in the following year he took his seat within the bar, as one of His Majesty's Counsel. The whole field of his profession was now open to him. His practice and his reputation continued daily to increase; going, as it were, hand in hand,

and reciprocally aiding and forwarding each other.—Such was his situation, and such were his prospects, when, on Mr. Fox's accession to power in February 1806, he was called to the office of Solicitor General,—an office inadequate, in the opinion of many, to his merits and to the high eminence which he had attained at the bar, but valuable in his eyes from the hope which it afforded him, of being able to give effect to his public principles and to become more useful to his Country.—On this occasion he received the usual honour of knighthood, and was soon afterwards returned to Parliament as one of the members for Queenborough.

Having taken his seat in the House of Commons, Sir Samuel Romilly was immediately appointed one of the managers for conducting the trial of the late Viscount Melville, then under impeachment for high crimes and misdemeanors. The able manner in which he performed this arduous duty,—the strength, order, and perspicuity with which he arranged the charges and summed up the evidence against the accused, were acknowledged by all, and were spoken of by Mr. Fox in terms of unqualified admiration.

Another labour in which he was about this time called upon to engage, related to the inquiry which had been instituted into the conduct of Her Royal Highness the Princess of Wales. In 1805, before he became Solicitor General, he had been professionally consulted on this subject, and had given his opinion at some length upon the different documents and evidence submitted to his consideration. By the advice of Lord Thurlow, His Royal Highness the Prince of Wales was afterwards induced to lay the affair before His Majesty's Ministers, and a Commission consisting of the Lord Chancellor, Earl Spencer, Lord Grenville, and Lord Ellenborough, was immediately appointed to investigate the real circumstances of the case. Several meetings were held by the Commissioners, at all of which, with one accidental ex-

ception, Sir Samuel Romilly attended for the purpose of writing down the depositions of the several witnesses examined. This he did *precisely and literally in the very words of the witnesses*, to whom the depositions were then submitted for perusal and signature. This was the only office which he had to discharge on the occasion; an office for which he was selected in preference to the Attorney General or to any other person, merely on account of his previous acquaintance with the case, and because it was thought advisable (if the inquiry should not be followed by any judicial or legislative proceeding) that the utmost secrecy should be preserved*. Such are the simple facts of the case, as far as it is connected with the conduct of Sir Samuel Romilly. The attempt which was once made to pervert them into a source of obloquy to his character, can alone render them objects even of the slightest interest or notice.

Although assiduous in the discharge of his Parliamentary no less than of his official duties, Sir Samuel Romilly seems, for the most part, to have left the debates of that period to his more experienced colleagues. Not but that there were occasions on which his feelings were roused and his eloquence exerted with the happiest effect. In the discussions on the abolition of the Slave Trade, and on the alteration of the Mutiny Bill, by substituting a limited for an unlimited period of Military service, he bore a distinguished part. He also introduced into Parliament two Bills, the one amending the Bankrupt Laws†,—the other making the freehold estates of persons dying indebted, assets for the payment of their simple contract debts. Of these the first was alone permitted to pass into a law; though a measure founded on the

* See page 436 of this volume. † 46 Geo. III. c. 135.

latter, and extending to all persons engaged in trade, was soon afterwards adopted by the Legislature without opposition *.

On the 25th of March 1807—the day on which the Royal assent was given to the Bill, which had passed the two other branches of the Legislature, for the Abolition of the Slave Trade—the authors of that blessed work retired from office. The change of administration was followed by a dissolution of Parliament, and in the new election, Sir Samuel Romilly was returned for the borough of Horsham. Though divested of the influence of power, he did not relax in his labours for the melioration of the law. Besides the measure already noticed, relative to the Freehold Estates of deceased Traders, he succeeded in obtaining an Act to take away from Members of the House of Commons the privilege of receiving copies of the Bills filed against them in courts of equity at the costs of the plaintiffs †.

In the following year, 1808, he brought forward his first motion for amending the criminal law. For how long a period the subject had engaged his attention, is evident not only from his reply to Dr. Madan's "Thoughts on Executive Justice," in 1786, but from many of his private letters of an earlier date. In one, written on the 1st of March 1782, to his brother-in-law in Switzerland, he says, "I have lately read a second time, Beccaria on Crimes and Punishments, a favourite book, I know, of yours, and I think deservedly. But does not the author too often reason by analogy to his favourite mathematics? Are not his observations sometimes too subtle? And what do you think of the principle on which he relies so much, that crimes are to be measured by the injury they do to the State, without regard to the malignity of the will?"—In another letter of a subsequent date, he says, "We have

* 47 Geo. III. c. 74. † 47 Geo. III. c. 40.

lately had an extraordinary trial here of a clergyman, and another gentleman, who were charged with murder, by killing an American gentleman in a duel, the one as principal, the other as second. The law with us is clear and express, that the crime is murder, however fairly the duel may have been fought. There was no doubt on the evidence of the facts. The Judge explained to the Jury what the law was in the strongest terms; but the Jury acquitted both the prisoners, and the verdict was received with the warmest approbation of the audience. Observe, that this verdict was given by twelve tradesmen, who may be supposed to be not much under the dominion of those prejudices respecting the false point of honour which enslave those in a higher rank; but, in truth, one's nature recoils at the inhumanity of laws which punish with death the doing of that, which, in certain circumstances, one must be more or less than man not to do." In another letter he says, "If one could ever doubt that laws which contradict, or if I may so express myself, which do violence to the general sentiments of a nation, never can be executed; we have lately had a very convincing instance of it. Two officers quarrelled about a gaming debt; they did not fight till six months afterwards, when one of them was shot through the lungs, and though he could with difficulty stand, he insisted upon firing, and killed his adversary. The law is express, that to kill a man in a duel is murder; the coroner's inquest, however, which sat upon the body of the person killed, refused to bring in a verdict of murder. - - - - -

"I am much obliged to you for giving me your sentiments on the question, whether any crime ought to be punished with death. The objection you make to it, founded on the errors of human tribunals, and the impossibility of having absolute demonstration of the guilt of any criminal, strikes me more forcibly than any argument I had ever before heard on the same side of the question. I confess to myself it seems absolutely

impossible to omit death in the catalogue of human punishments; for, if the criminal will not submit to the punishment prescribed, if he escapes from prison, and commits new crimes, he must at last be punished with death. So it is, at least in the Utopia of Sir Thomas More. You will not, however, I hope, conclude from this, that I am perfectly satisfied with the penal codes that now subsist in Europe, and particularly with that of my own country, where theft (pilfering it should rather be called), and every species of the crimen falsi, are punished with death. The laws of England may, indeed, be said to be written in blood, and we may almost apply to ourselves the words of Montaigne, *Il n'est si homme de bien qu'il mette à l'examen de loix toutes ses actions et pensées, qui ne soit pendable dix fois en sa vie.*"

In a letter, also, to Mr. Roget, of the 10th of February 1783, Mr. Romilly says, "I am much obliged to you for your account of the work of M. Sirven. An author who reasons freely upon such subjects as he has chosen, is always useful to mankind, though his opinions may sometimes be wrong. I shall, as you desire, give my opinion of the work, but it must be on condition that you communicate yours to me. In the first place, I agree with you, that the author has arranged his subject in a preposterous order. His disposition is like that of Eden, an English writer, who treats first of punishments, and then of crimes. The principles which M. Sirven begins with laying down, were they established, would prove much more, I think, than the consequence which he contents himself with drawing from them; for, if it be true that, in a state of nature, man has no right over the life of a fellow-creature, but when the destruction of that life is the only means of his own defence, and that, in entering into society, he does not consent to the loss of his own life in any case, it seems to follow undeniably that the Legislature has not *in any case* power over the life of any member of the

State, and not, as the author insists, that the Legislature has such a power *in but few cases*. It is certain, that in no case can the death of a criminal be the sole means in the hands of Government to defend itself and each of its subjects, from his attacks; for he must be in the power, and at the mercy of Government, before it can compel him to appear before a tribunal to answer for his crimes. And though it may happen once or twice in the history of a nation, that the government may be actually in danger from an individual, and can be made secure only by his death, yet that is a case so extraordinary, so rare, and which so immediately changes society into a state of war, that no Legislature need or can provide for it. The imminence of the danger will produce its own remedy, and men will never forget in such critical moments, that the safety of the people is the supreme law. Catiline, and his conspirators, who were criminals of that kind, lived in a state where by law they could not be punished with death, and yet they did not escape."

"Neither the sentiments of Burlamaqui, nor those of any other writer on the law of nature, which I have had the good fortune to read, agree with the principle which the author assumes, that, antecedent to society, man had no right over the life of his fellow-creature, except in cases where he had no other means left him of defence. And, indeed, it would follow, from the principle, that in a state of nature, no punishment can ever be inflicted; for, a crime once being committed, no individual is in immediate danger from the criminal; and if he is killed in resistance to his attempts, he does not suffer for his crime, but his crime is prevented by his death. But surely it is much more reasonable to say that, in a state of nature, when a murder was committed, every man had a right (and some writers insist that it was every man's duty) to punish the murderer, who is to be considered as a noxious animal, which self-pre-

servation and regard for one's fellow-creatures, obliges one to destroy.

"With regard to the author's second principle, that a man, in entering into society, cannot be supposed to consent ever to lose his life or liberty; it is very true, that there are no advantages for which a man would consent to such a loss, but there certainly are advantages in exchange for which, he may wisely consent to *risk* both his liberty and life on particular occasions. He may wisely say, as he must be presumed to do, in giving his assent to every law—'I consent, if I do this injury to another, to suffer death, provided that any other, who does the same injury to me, shall suffer death.'—The obligation is mutual, and it is *that* which insures his safety. Men undoubtedly do not, in entering into society, consent to lose their lives; on the contrary, the end of society is the preservation of the lives and liberties of its members. But if those advantages cannot be secured to all, but by risking the loss of them to some in particular cases, it seems no inconsistency to suppose, that a man has given his assent to the very law by which he suffers. And the absurdity of the contrary reason will best be seen by carrying it to all the length to which it will go; for, by the same rule that a man will not consent to the loss of his own life or liberty, so neither will he consent to suffer any other evil or inconvenience,—consequently by this mode of reasoning, either all offences must pass without any punishment whatsoever, or some other ground of punishment must be sought for, than the contract by which society is formed.

"It would far exceed the bounds of a letter, were I to examine all the author's opinions. One, however, I cannot omit observing on; as it is very important, and because it leads him to censure the criminal law of England. He thinks that an *inchoate* crime (if that expression may be allowed) ought to be punished with equal severity, as where it is complete;

and he blames our law, because, with a very few exceptions, (and treason is almost the only one) they are not considered in the same light. But surely common sense tells one, that there is much less guilt in forming a criminal design, than in persisting in it to its execution. There are many men who, in the heat of resentment, form the worst resolutions, but who would afterwards find it impossible to execute them; and the law must be very unjust indeed, which treats with the same severity, the man who repents of his crime, while it is yet time, and before the mischief of it has taken effect, and him who long broods over his bloody purpose, deliberately plans it, and remains impregnable to pity or remorse, even to the moment when he strikes the fatal blow. At the same time, one must agree, that where the criminal has done every thing to give his purpose effect, and is disappointed merely by accident, his crime is as great as if the attempt had been successful. A man, who having mixed poison for another (when he sees the fatal cup raised to his lips, and when all the dreadful consequences of his crime, which, till then, the violence of passion had concealed from him, rush upon his imagination), suddenly repents, and dashes the cup against the ground, is surely less criminal than one whose victim has escaped his vengeance, merely because the poison was too weak, or his constitution vigorous enough to overcome its effects: and though I agree, that the criminal, in this latter case, is to all intents a murderer, I yet doubt the policy of punishing even him as such, because to punish a mere attempt is to put it in the power of false accusers to ruin any innocent man against whom they have conceived an enmity*."

"It is hardly possible for men malevolently to charge an innocent person with murder, because that crime must be

* The attempt to poison has been made felony without benefit of clergy, by 43 Geo. III. c. 58, A. D. 1803.

proved, not merely by oral testimony, but by its own evidence, by the *evidentia rei*; and it is scarcely practicable by any perjury to fix the circumstances of a murder on one who is innocent of it. But where an *attempt* may be punished, what can be more easy than to fabricate evidence in support of a long train of imagined facts, not one of which may be true? —If you object that our law is, then, unjust in punishing a mere attempt in the case of treason, I answer, that, if treason cannot be punished before it be complete, it cannot be punished at all; since its success overturns the established government, and that by our law, the positive testimony of two persons is required for a conviction of treason, though the testimony of one is, in general, sufficient to prove any other crime.—Besides, if the mere intentions of men are to be punished, where is the line to be drawn? What act is to be deemed a sufficient manifestation of a criminal purpose?

"But to consider the question in another, and, I think, its most important point of view, I mean with regard to what is, or ought to be, the only object of human laws, the prevention of crimes, how will the punishment of a mere attempt to commit a crime attain that end? Either a failure of success is a case which will never enter into the contemplation of the criminal, who means, undoubtedly, to carry his designs into full effect; or, if in his contemplation, the law must warn him to make sure of success, to take every anxious precaution that his designs may not be frustrated, and that he may not incur the penalty of the law without completely attaining his end, and satisfying those passions for which he braves its vengeance. The effect of such a law, then, seems rather to be that of multiplying than diminishing the number of crimes."

These extracts from the letters of Sir Samuel Romilly have been made, not so much for the sake of the opinions which they contain (though, even in that point of view they are deserving of attention), as for the purpose of shewing

the early interest which the subject of them had awakened in his bosom. Nor did he confine himself to the consideration of the mere abstract principles and theory of law. During an attendance of fifteen years in courts of criminal justice, he made its forms and administration, no less the objects of his peculiar study and observation*. That he did not bring the subject before Parliament at an earlier period, and when to the weight of his own arguments, might have been added the seal of official authority, may be well accounted for by the short duration and sudden dissolution of the Ministry, of which he was a member.

Sir Samuel Romilly now commenced his parliamentary labours for the mitigation of the penal code, by bringing in a Bill to repeal the 8th of Elizabeth, and to substitute, in the place of death which that statute denounced against the crime of privately stealing from the person, the more appropriate penalty of transportation for seven years, or imprisonment and hard labour for any term not exceeding three years. The Bill passed both Houses of Parliament, but with amendments changing the description of the offence from "privily" stealing, to stealing generally, whether privily or not, as contra-distinguished from robbery, and extending the term of transportation to life, or to any number of years not less than seven, at the discretion of the court†. Another Bill, introduced by him at the same time, and authorizing the Judges, in certain cases, to order a compensation from the county to persons unjustly accused and brought to trial for felony, was subsequently withdrawn.

In 1809, Sir Samuel Romilly again brought the subject of the Bankrupt Laws before Parliament, not indeed with any expectation of being able to render the system perfect,

* See pages 38 and 341 of this volume.

† 48 Geo. III. c. 129.

but from an anxious desire to remove, if possible, some of its most glaring and mischievous defects.—By the Act of 1806 * he had, in some degree, protected not only the commission itself, but all contracts and dealings *bonâ fide* had with the bankrupt, by persons ignorant of his situation, from the consequence of previous acts of bankruptcy.—By the present statute †, among other salutary changes, a similar protection was extended to executions and attachments against lands and goods; evidence was allowed, and the bankrupt's certificate was made a discharge, of particular debts not previously provable under the commission, whilst the litigation and expenses attendant on it, were diminished by making the commission and proceedings evidence of the trading, the act of bankruptcy, and the petitioning creditor's debt, in all actions by or against the assignees, where the opposite party has not given notice of an intention to dispute these points and to try the validity of the commission ‡. In the speech with which Sir Samuel Romilly introduced this measure, he adverted to other defects in the system,—to the remedies which he had to suggest for them,—and to the reasons which deterred him from at once proposing them to the consideration of Parliament. Many of his opinions,—particularly in what related to the severe statute, inflicting death upon bankrupts not surrendering to their commission, or withholding property to the amount of twenty pounds,—have been adopted by the Committee of the House of Commons appointed in 1818.

* 46 Geo. III. c. 135. † 49 Geo. III. c. 121.

‡ Amongst other alterations introduced by this statute, was making the assent of *three fifths* in number and value of the creditors, instead of the former proportion of *four fifths*, necessary to the certificate and discharge of the bankrupt. This alteration, which has been condemned by many, was not contained in the original Bill, but was added to it in the House of Lords. See Vol. II. 445.

for the purpose of considering the operation of the Bankrupt Laws*.

A subject, which then occupied the attention of the House of Commons and of the Nation, was the inquiry instituted into the official conduct of the Duke of York. An address to the Throne, stating the existence of corrupt practices in the disposal of commissions,—the impossibility of their existence to the extent proved without the knowledge of His Royal Highness,—and the propriety of removing him from the command of the army,—was proposed by Colonel Wardle and supported by one hundred and twenty-three members. Amongst these was Sir Samuel Romilly, who in an argumentative and manly speech explained all the circumstances which had operated to determine his opinion. These proceedings were followed by charges against two of His Majesty's Ministers, Viscount Castlereagh, and the Right Hon. Spencer Perceval, for corrupt conduct in the disposal of seats in the House of Commons. Though scarcely denied, or even palliated, except on the ground of the notoriety of such practices, the facts alleged by Lord Archibald Hamilton and Mr. Maddock were allowed by a great majority to pass without censure or inquiry. Sir Samuel Romilly, it is almost needless to say, voted, in both cases, with the minority.

During the session of 1810, the country was agitated by the question of Parliamentary privilege, and by the commitment of Sir Francis Burdett to the Tower, for a Letter to his constituents, "denying the power of the House of Commons to imprison the people of England." The controversy which arose on this subject, had grown out of the imprisonment of a Mr. Jones, who had been sent to Newgate by order of the House of Commons for an alleged libel on two

* See the Report of the Committee ordered to be printed by the House of Commons, 8th May 1818.

of its members. On this occasion Sir Samuel Romilly had the misfortune to differ from many of his most valued friends. But he shrunk not from the trial. He avowed candidly and firmly, but without asperity, the grounds of his dissent.—Conceding to either House of Parliament every privilege in its fullest extent, which might be required either for the security of its members, or the furtherance of its proceedings, he did not hesitate to call in question its claim to supersede the jurisdiction of the regular tribunals of the country in cases of libel, affecting only the conduct of individual members, or the character and policy of its own past proceedings. Its deficiency in every requisite for the administration of justice was glaring. Whilst in the ordinary courts of law it was essential that all charges should be established on oath; whilst the defendant might produce evidence in vindication of his innocence, and counsel to extenuate his errors; whilst his case had every advantage from the unbiassed attention of the Court, and from the solemn and impartial deliberation of his peers,—every such privilege was withheld from those who might have the misfortune to be arraigned before a tribunal like the House of Commons. The offender was there cited before men, who united in themselves the discordant characters of party—accuser—and judge. No oath could be administered—no defence heard—no evidence in his behalf admitted; whilst the most aggravating constructions (constructions, possibly, the most remote from any thing intended by the author, but which he has no opportunity to soften or refute) might be put on the offensive publication, according to the different views, inclinations, or prejudices of his judges. Such, in part, is the substance of those grounds on which Sir Samuel Romilly on this occasion dissented from the opinions of a large majority of the House of Commons.

This speech was soon followed by an ineffectual motion for the liberation of Mr. Jones; in supporting which its

author took occasion to condemn, in decided terms, the practice, pursued by the House of Commons, of rejecting all applications on the part of persons imprisoned under its authority, unless accompanied with a petition, acknowledging the justice of the punishment and expressing contrition for the offence. It was a tyranny over the mind—a species of persecution, in direct opposition to the best feelings of mankind, and only tolerated in those relics of the dark ages—our spiritual tribunals. "For myself" (continued Sir Samuel Romilly), "I can truly say, that was I in the situation of Mr. Jones, I would suffer any extremity,—highly as I prize it, I would sacrifice even my liberty, rather than consent to purchase it by a pitiful recantation of my real sentiments."

Encouraged by the success which had attended his former efforts for the melioration of the law, Sir Samuel Romilly, during this session, moved for leave to bring in three Bills to repeal the Acts of 10 and 11 William III.—12 Ann,—and 24 Geo. II., which make the crimes of stealing privately in a shop, goods of the value of five shillings; or in a dwelling-house, or on board a vessel in a navigable river, property of the value of forty shillings, capital felonies. The arguments employed by him on this occasion were afterwards published in a tract entitled, "Observations on the Criminal Law of England." Proceeding on the principle of the certainty of punishment being more efficacious than any severity of example for the prevention of crimes, he observes in illustration of his argument, that, "if it were possible that punishment, as the consequence of guilt, could be reduced to an absolute certainty, a very slight penalty would be sufficient to prevent almost every species of crime, except those which arise from sudden gusts of ungovernable passion. If the restoration of the property stolen, and only a few weeks, or even but a few days imprisonment, were the *unavoidable* consequence of theft, no theft would ever be com-

mitted. No man would steal what he was sure that he could not keep; no man would, by a voluntary act, deprive himself of his liberty, though but for a few days; no man would expose himself to certain disgrace and infamy, without the possibility of gain. It is the desire of a supposed good, which is the incentive to every crime. No crime, therefore, could exist, if it were infallibly certain that not good, but evil must follow as an unavoidable consequence to the person who committed it. This absolute certainty, it is true, can never be attained, where facts are to be ascertained by human testimony, and questions are to be decided by human judgments. But the impossibility of arriving at complete certainty, ought not to deter us from endeavouring to approach it as nearly as human imperfection will admit; and the only means of accomplishing this, are a vigilant and enlightened police, rational rules of evidence, clear and unambiguous laws, and punishments proportioned to the offender's guilt."

But though standing on this principle, and supported by an accumulation of facts almost unprecedented; and which nothing but the most unwearied zeal and perseverance could have supplied, not one of these Bills was suffered to pass into a law. The first was lost in the House of Lords; the second in the House of Commons; whilst the third, after having been postponed from time to time till the end of the session, on account of the absence of members, was at length necessarily withdrawn. In the following session they were again brought forward by their enlightened author, but were all, on the motion of Lord Ellenborough, rejected by the House of Lords. Since that period the Bill to abolish the punishment of death for stealing privately in a shop, goods of the value of five shillings, has three times passed the House of Commons, and been as often rejected by the House of Lords. Two other Bills, however, which he brought forward in 1811, in consequence of the petitions of several

linen manufacturers in England and the North of Ireland; and which abolished the punishment of death for stealing from bleaching-grounds in both countries *, were allowed to pass into laws; and in 1812 he succeeded in procuring the repeal of the barbarous Act of Elizabeth, which made it a capital offence in soldiers and mariners to be found wandering about the realm without a pass. He was also the means of much good by calling the attention of Parliament to the system of the hulks and of transportation, and by his repeated exertions for the establishment and regulation of penitentiaries.

On the 29th of September 1812, the Parliament was dissolved; and Sir Samuel Romilly, on the invitation of a very respectable body of the electors of Bristol, came forward to offer himself a candidate for the representation of that city. The other candidates were Mr. Hart Davis, Mr. Protheroe, and Mr. Hunt. On the 6th of October the election commenced, when Sir Samuel Romilly was proposed by the Mayor of Bristol, Mr. Castle, and seconded by Sir Abraham Elton, Bart. in a manner equally creditable to their feelings and their understandings. They had selected him, they said, from amongst public men on the ground of unsullied integrity, eminent talents, and consummate ability in the conduct of public business; and this judgment of him they had formed, not from any professions on *his* part of what he intended to do, but from *their own* observation of what he had already done. During the period in which he sat in Parliament, he had been the steady guardian of civil and religious freedom—the supporter of inquiry into all public abuses—the advocate of every measure tending to reform the representation of the

* The Acts repealed were the 18 Geo. II. c. 27—and 3 Geo. III. c. 34.

people—the disinterested and unwearied friend of the poorest, the humblest, and the most forlorn of his fellow-creatures.—His private worth, if it might be alluded to at such a moment, was only equalled by his public virtue.

The Poll was continued by Sir Samuel Romilly until the 14th of October, when finding from the coalition which had been formed between the friends of Mr. Davis and Mr. Protheroe, that there no longer remained to him any prospect of success, he came forward on the hustings and intimated his intention to decline the contest.—"I had once intended" (he said) "to persevere in the contest as long as there remained a voter who would honour me so far as to add his name to the long list of those who have declared in my favour; but, upon reflection, I think that I should not be justified in doing so; since it would only be to gain honour for myself at the expense of trouble and inconvenience, and perhaps most serious loss to the families of those who are desirous to serve me.—As far, therefore, as I am concerned, the election is at an end. I retire from it, defeated but not humiliated—disappointed, but in no degree mortified—with gratitude to thousands of the inhabitants who have shown their attachment to me, and without resentment to a single individual. Though unsuccessful in the contest, I am proud of the support I have received; and I consider it as a most distinguished honour that at this moment I have more than seven hundred single votes.

"I have to return my most grateful thanks to those who have voted for me;—I have to thank the numerous freemen who have assured me that I had their best wishes and their hearts, though their votes *must* be given against me;—I have to thank those, too, who told me that I should have not their wishes only but their votes, but who afterwards found it impossible, without ruin to their families, to perform the promise they had given;—I have to thank those various sects and

denominations of Christians who have united in my support; —I have to thank those numerous Friends whose quiet habits of life, and whose love of peace and tranquillity, make them averse to mingle in the bustling and tumultuous scenes which contested elections generally present, but who have, nevertheless, on this occasion submitted to the pressure, and noise and uproar of the crowded hall to give a public testimony of their honourable and valuable approbation of my conduct;— I have to thank the city of Bristol for the warm and generous manner in which it has declared itself in my favour. Though I shall not have the honour of representing it in Parliament, I shall always have in grateful remembrance the kindness which it has shewn me. I shall always take the deepest interest in its success;—that it may always flourish, that it may increase in prosperity, in public spirit, in virtue and in happiness, will be my fervent prayer. I will lose no opportunity of serving its inhabitants; and though before the election and whilst I was a candidate, I made no promises,—now, that the election may be considered as at an end, and nothing can be gained by my promises, I assure them that I shall be always anxious to promote their interests, and to advance their prosperity."

After praising the order and tranquillity with which the election had been conducted, and beseeching the people not to yield to any provocations to riot and outrage, which were often the cause, and oftener the pretext, for invading popular liberty, he concluded, by again expressing the warm sentiments of gratitude and attachment with which he took leave of the city.—Sir Samuel Romilly then retired amidst the tears and blessings of all around him. It was expected that the election would have immediately closed, but, a gentleman having expressed his determination of continuing the poll, it was kept open until the 16th, when the final numbers were—for Mr. Davis 2895—for Mr. Protheroe

2435—for Sir Samuel Romilly 1683—and for Mr. Hunt 523.—But though excluded from the representation of Bristol, Sir Samuel Romilly was not lost to the House of Commons and to his country, being soon afterwards returned to Parliament for the Borough of Arundel.

About this time a Bill, founded on the Report of a Select Committee of the Lords, was brought into Parliament for appointing an additional Judge in the Court of Chancery. Sir Samuel Romilly stated his objections to the measure in two short Tracts, the latter of which was addressed to Lord Redesdale, in reply to some observations which his Lordship had published on the former. It is unnecessary here to enter into all the points of controversy. It is sufficient to state that the project was defended on the alleged necessity of allowing the Chancellor more time for attending to appeals in the House of Lords; and that it was opposed, as tending to divest his office of those functions which had been thitherto considered as most essential to it, to enhance the expense of suits, to multiply the number of appeals, and to protract the final decision of causes. The remedy proposed by Sir Samuel Romilly for the evils complained of, was, that the House of Lords should in every session devote a larger portion of its time to the hearing of appeals, and that, in the absence of the Lord Chancellor, and whenever there were appeals from his decrees, one of the other Law Lords should preside in his room. The same arguments in opposition to the Bill were again vainly urged by him during its passage through the House of Commons.

During this session Sir Samuel Romilly (in addition to the Bill already stated, abolishing the punishment of death for privately stealing in shops) introduced two Bills, for altering the punishment of High Treason, and for taking away the corruption of blood in cases of Treason and Felony. Neither of them was at that time allowed to pass the House of Com-

mons. In 1814, therefore, he introduced them again, and so far succeeded as to procure the repeal of some portion of the obnoxious laws. With respect to High Treason, he proposed, in place of the former barbarous judgment in such cases awarded, that the offender should be sentenced to be hanged by the neck until he was dead, and that his body should be at the King's disposal.

Mr. Yorke, however, contended, that if the punishment for High Treason was left in that state, it would be less than the punishment annexed to murder, and proposed in addition to hanging, *the separation of the head from the body*, "as a fit punishment and appropriate stigma," in such cases. To this amendment Sir Samuel Romilly was compelled to submit. —In his attempt likewise to take away corruption of blood as a consequence of attainder, he was, in some degree, frustrated by the opposition of the same gentleman, who succeeded in his proposed amendments to exempt High Treason, Petit Treason, and Murder, from the operation of the Act*.

It would be beyond the scope of this Memoir to particularize every occasion, on which the benevolence and talents of Sir Samuel Romilly were exerted in Parliament. He was never unconcerned in any measure which could affect the happiness of individuals, the welfare of his country, or the general interests of mankind. Whilst the revival of the Slave Trade, the persecution of the French Protestants, the Alien Bill, and other great public questions were calling forth his most impressive eloquence, he did not overlook the humbler and less attractive subjects of our domestic policy. The law of debtor and creditor, the state of our hulks and prisons, the prevention of crimes, and the reformation of offenders, never ceased to engage his most serious inquiries†.

* Parliamentary Debates, April 25, 1814.

† Many of Sir S Romilly's Speeches, and more particularly

During the session of 1816, the attention of Parliament was called to the treaties which had been entered into by the English government with foreign powers; when the conduct of the former, in forcibly reinstating Louis XVIII. on the throne of France, and in keeping up an army for his defence, after having solemnly abjured all right and inclination to interfere with the internal government of that country, became the subject of warm and repeated discussions. Sir Samuel Romilly stigmatized it as equally impolitic and unjust, and as being at variance with every principle which once distinguished the character of this country. In reply to Lord Castlereagh, who had endeavoured to justify the proceeding on Whig example and Whig authority, he contended, that the object of our *Ancestors* was to resist those very principles which their pretended admirers were labouring to establish. *They* had combined with foreign powers, not to uphold the claims of despots, but to guarantee the rights of nations.—They had confederated with their allies, not for the purpose of imposing particular dynasties or forms of government upon other states, but to prevent the subversion of their own liberties, and to secure a succession established by the free voice of the people, in opposition to the doctrines of legitimacy!

In the course of the following session a motion was made by Sir Francis Burdett for a Select Committee to inquire into the State of the Representation. Sir Samuel Romilly said,

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those, in which he proposed to subject Freehold Estates to the payment of Simple Contract Debts, will explain his views of the law of Debtor and Creditor. It is sufficient here to say, that, whilst he would have made property,—of whatsoever description,—answerable to its last shilling for the engagements of its owner, he was decidedly averse to laws, which leave to the individual discretion of a probably exasperated Creditor, the power of inflicting upon misfortune or even imprudence, those penalties which ought only to attach to vice.

that he should most cordially vote for it.—"I do so," he continued, "not from any vain hope of popularity—not from any expectation of being able to gratify those who now influence the public opinion on this subject,—but from a sincere, a deep-rooted conviction, that some reform is necessary. I am a friend neither to universal suffrage nor to annual parliaments: I even doubt whether I am prepared to go, all at once, so far as to make the right of voting at elections co-extensive with taxation; but for some reform,—for some material change in the present system, I am, and long have been, a zealous advocate. At an early period of my life—long before I had a seat in Parliament—when from the gallery of this House I first witnessed its deliberations, and heard Mr. Pitt with all the generous ardour of youth, and with the same eloquence which distinguished his maturer age, pleading the cause of parliamentary reform, I became sensible to the necessity of the measure. The impressions which were then made on my mind, have never been effaced. Subsequent reflection and experience (more particularly since I have myself become a member) have only served to confirm them. - - - - - - -

"A right hon. Gentleman has represented the British constitution as being of so delicate a nature, that the least derangement of existing practices may cause its destruction. The slightest scratch, he says, may fester and become a mortal wound. Surely this is a slander on the constitution. It is of a more robust and vigorous frame. When it has stood so many shocks; when it has survived the innovation of the Septennial Act and the Irish Union, who is there that can seriously believe, that it will be endangered by recurring to triennial parliaments or by transferring the elective franchise from the decayed and deserted boroughs to the inhabitants of populous and flourishing towns?

"The view which an hon. Gentleman has taken of this subject is perfectly new. He considers the present state of

the representation not, as it really is, the unforeseen consequence of gradual decay and accident, and as imperceptibly brought about by that '*greatest of innovators, time,*' but as the effect of design, and the result of the wisdom of our ancestors. He describes the representation of Old Sarum as entitled to as much respect as the representation of the county of York. And it is to such deviations from all the principles of the constitution, or, to use his own terms, to such contrivances of ancient wisdom, that this country is indebted for all the happiness and prosperity which it now enjoys, and which, he admonishes us not to bring into danger by our desire of change!—Who, that heard this language, would imagine that the hon. Gentleman was speaking of a time like the present,—of a time, when our foreign trade is diminished—our manufacturers unemployed—our agricultural interests labouring under difficulties such as have been never before known—our poor rates increased until it is scarcely possible to levy them — the revenue of the State falling far short of its expenditure—and the nation struggling under a burden of taxation, which it is unable to support? These are the blessings for which we are told to be so thankful, and which we are accused of bringing into danger."

In the same spirit, with which Sir Samuel Romilly supported the cause of Parliamentary Reform, he resisted the Suspension of the Habeas Corpus, the restraints on Public Meetings, and every other invasion of popular freedom. The Circular Letter of the Secretary of State to the Lords Lieutenants of Counties, promulgating the opinions of the Attorney and Solicitor General on the law of libel, and directing the magistrates of their several districts to arrest, and imprison or hold to bail, all persons charged with that offence, he made the subject of a motion in the House of Commons, as his friend Earl Grey had done in the House of Lords. In his speech on this occasion he strikingly exposed the alarming and

unconstitutional nature of such an interference on the part of Government, and deprecated in strong language the dangers to which the freedom of the press, and the peace and happiness of society, were subjected, in consequence of such undefined powers being committed to a large and mixed body, like the magistracy of this kingdom. Any one charged with having published a blasphemous or seditious libel, or with having uttered a blasphemous or seditious expression, might, according to this new law, be sent to prison or held to bail at the instance of any informer, however infamous, and by the command of any magistrate however prejudiced or indiscreet.—"The tyranny of the reign of Charles the Second" (continued Sir Samuel Romilly) "could not have been greater than this. It is a folly any longer to talk of the freedom of the press. No paper can in future criticise the measures of Ministers, or render itself in any way obnoxious to any busy magistrate, without exposing its author to the danger of imprisonment. The magistrate is not even bound to examine the publication complained of; the oath of the accuser is a sufficient ground for him to act upon.—But what shall we say of the new dangers that beset this new law, from the system lately introduced of conducting the affairs of Government by spies and informers—wretches, who may become the abettors of the very offence which they afterwards denounce,—who may insinuate themselves into the privacy of our domestic circles,—listen to the unsuspicious conversation of our tables,—urge on the ignorant and unwary to the use of intemperate and thoughtless expressions,—and then, by an exaggerated statement of what has been said, have them imprisoned or held to bail at the pleasure of the magistrate by whom they have been employed?" "I know that the noble Lord, whose official conduct I have now brought before the House, far from qualifying or retracting, is disposed to glory in what he

has done. 'If I am accused' (he says) 'of having used my best endeavours to stop the progress of blasphemy and sedition, I plead guilty to the charge, and shall be ever proud to have such charges brought against me!'—Such, however, let the noble Lord recollect, has been the argument of bigots and tyrants in all ages. Such was the boast of the Duke of Alva,—of Philip the Second and his sanguinary consort, when, without remorse, they tortured thousands of their fellow-creatures,—when, in their unrelenting zeal, they spared neither age, nor sex, nor condition. *They* too sought for a cover of their cruelties in pretexts of religion, and believed themselves, or would have persuaded others, that they were only actuated by a pious desire to extirpate heresy and irreligion.

In the course of the following session, during the debates on the Indemnity Bill, an opportunity was afforded to Sir Samuel Romilly of exposing in true and vivid colours the fatal consequences which had resulted from this Letter.—Amongst the various, uncontradicted complaints of cruelty and oppression with which the table of the House of Commons at that time groaned, were several from persons alleging, that their houses had been forcibly entered and searched—their books and papers seized—they themselves torn away from their families—loaded with irons like common felons—and sent, without trial, to hard labour in the House of Correction. The case of one of them—a man of the name of Swindells—was particularly affecting. His house had been broken into at midnight by persons pretending to search for papers. His wife, in consequence of the fright, was prematurely delivered and died. The infant, deprived of the care and succour of its mother, also died; whilst the wretched father having been dragged away to Chester Castle, was imprisoned for five weeks, and then discharged without trial,—impoverish-

ed, ruined, a widower, and childless *!—"And all these cruelties" (exclaimed Sir Samuel Romilly) "have been inflicted on a person guilty of no crime!—Are these wrongs to remain unredressed? Gracious Heaven!—but do the Gentlemen opposite imagine that because they can suspend the laws of this country, they can suspend the laws of nature?—Can they contemplate the consequences of such proceedings, and bow before their God, or look their fellow-men in the face?"—Such proceedings,—he continued—"are better suited to the government of Algiers, than to any government that professes to be directed by laws;—they may be vindicated under such a government,—they cannot be mentioned in this House without execration and horror.—And yet with such statements before us, uncontradicted, unexplained, we are now called upon to exclude the sufferers from all redress,—to close the avenues of our courts of justice against them—and to grant indemnity to all who have violated the laws, under pretence, as Ministers call it, of preserving the public peace. The House may grant indemnity; it may throw a shield over the authors of such cruelties, and screen them from legal prosecutions; but having done this, it cannot shelter them from the execrations of mankind; it cannot protect them from the reproaches and tortures of their own consciences!

"My hon. friend, the Member for Durham, has said that this measure is the winding up of that system of injustice which has been always pursued and encouraged by Ministers. Would to Heaven, that it were so!—I cannot consider it as the winding up, but as the commencement, of a system which carries with it every species of petty and unbridled tyranny through the whole kingdom. To me it appears as a

* See Evans's Parliamentary Debates, vol. ii. p. 1015—and Hansard, vol. xxxvii. p. 1009—also Vol. II. of this work, p. 352.

prelude to fresh exertions of power, and further denials of justice."

In the course of this speech he ably combatted and refuted the arguments of those who had contended that a Bill of Indemnity was a necessary consequence of the Suspension Act. For the exercise of the powers allowed by Parliament, he observed that Ministers could require no indemnity. The Act which conferred the trust, sanctioned every thing necessary to be done in pursuance of it. Were Ministers to take upon themselves to lay an embargo on all vessels in our ports, a Bill of Indemnity would be necessary to protect them from the consequences: but no one could pretend that it would be necessary, if they had previously obtained the sanction of Parliament to the measure. The Suspension Act operated in the same manner. It empowered Ministers to detain, without bringing to trial, individuals suspected of treasonable practices; and prevented the latter from resorting to the Habeas Corpus or the common law of the land.—If, therefore, an indemnity was required for Ministers, it must be in consequence of acts, which the Suspension did not authorize—it must be, not for detaining men in custody under that law, but for imprisoning and treating them in a manner contrary to all law.—Such were, in part, the arguments by which Sir Samuel Romilly endeavoured to rouse the House of Commons to a sense of its duty, and to avert the great act of injustice, which Ministers had prepared for the adoption of Parliament. Unhappily, his exertions were as ineffectual, as many of his predictions have since proved to be correct.

The Parliament was now drawing towards its close. The last subject which engaged his attention in it was the Alien Bill,—a measure which had always excited his strong opposition.—"I should be the most ungrateful of men"—(he once observed)—"I should be unworthy of every blessing which I enjoy, if, forgetting the protection afforded by English kind-

ness and generosity to my ancestors, I did not struggle to extend the boon to other exiles, whether persecuted for religion or politics."—This measure (which had been continued from time to time, since the conclusion of the war) having overcome every obstacle to its progress in the House of Commons, had been sent up to the House of Lords; from whence in the beginning of June, it was returned with the addition of a retrospective clause excluding foreigners who had become the proprietors of stock in the Bank of Scotland at any time subsequent to the 28th of April in the same year, from the privileges of naturalization, which former Parliaments had held out as the very inducement and condition of such purchase. A petition from the individuals interested, praying not to be disfranchised of their just rights, was presented to the House of Commons by Sir James Mackintosh, and zealously supported by Sir Samuel Romilly, who deprecated the amendment of the Lords, as a violation of all public faith, and an interference with the peculiar privileges of the House of Commons. The latter objection was allowed to prevail; the clause was rejected; and though a Bill embodying its substance was immediately introduced into the House of Commons by Ministers, and hurried through that and the other branches of the Legislature in the short space of three days, the new measure was at least exempt from the retrospective operation and injustice of the former.

On this occasion Sir Samuel Romilly concluded his address by a solemn appeal to the House of Commons, calling on it, ere the moment of its Dissolution arrived, to reflect on the deeds for which it had to account,—to recollect that it was the Parliament, which, for the first time in the history of this country, had twice suspended the Habeas Corpus Act in a period of profound peace;—which had indemnified Ministers for every abuse and violation of the law, of which they had been guilty, in the exercise of the authority commit-

ted to them;—which had turned a deaf ear to the complaints of the oppressed, and had even amused itself with their sufferings;—that it was the same Parliament, which had sanctioned the employment of spies and informers;—which had approved of the interference of a Secretary of State with the duties of the Magistracy;—and which had shut the ports of this once hospitable nation against unhappy foreigners flying from persecution in their own country.—"Who our successors may be" (continued Sir Samuel Romilly) "I know not; but God grant that this country may never see another Parliament as regardless of the liberties and rights of the people, and of the principles of general justice, as this Parliament has been!"

On the 10th of June the Parliament was dissolved, and on the 18th, Sir Samuel Romilly, having acceded to the wishes of a very large and respectable body of the electors of Westminster*, was put in nomination as one of the candidates for the representation of that city. The others were the

* The following is a copy of the letter addressed to him on the occasion:

"Sir—Anxious to see this populous and important city represented in Parliament by a person conspicuous in the country for talents and integrity, we, the undersigned inhabitants of Westminster, request you to permit us to put you in nomination at the ensuing election. We further request you to abstain from all personal attendance, trouble, and expense. We require from you no pledge; since the uniform tenour of your honourable life,—your known attachment to the Constitution,—your zealous and unremitting efforts for the amelioration of the laws, the correction of abuses, and the support of the cause of freedom, justice, and humanity, wherever assailed, are a sure pledge to us of your qualifications for our service, in common with that of the country at large.

"We have the honour to be, &c. &c."

Westminster, June 6, 1818.

Hon. Douglas Kinnaird, Sir Francis Burdett, Sir Murray Maxwell, Major Cartwright, and Mr. Hunt; and though two of them were soon withdrawn, the contest on the part of those remaining, continued with uninterrupted ardour and perseverance, until the end of the fifteenth day, when the final numbers on the poll were,—for Sir Samuel Romilly 5839—for Sir Francis Burdett 5238—for Sir Murray Maxwell 4808—and for Mr. Hunt 82.—Those only who witnessed, can adequately picture to themselves the enthusiasm with which the issue of the contest was hailed by the assembled multitudes. The air rang with long and repeated acclamations, and not a voice or heart present but seemed to participate in the triumph, and to testify, in warm transports, its zeal for the cause, and its affection for the persons of the successful candidates.—Sir Samuel Romilly, who as well as his distinguished colleague, had abstained from all personal solicitation, expense, or interference with the choice of the electors, now appeared on the hustings for the first time, and expressed to his constituents, in strong but simple language, the feelings with which their generous confidence had inspired him. To be thus distinguished amongst public men, and to be selected by the free and unbiassed suffrages of so many thousands of his countrymen, to represent their wishes, to watch over their interests, and to protect their liberties, in Parliament, he rightly deemed the highest honour to which the citizen of a free state could aspire.

Hitherto the lot of Sir Samuel Romilly had been singularly happy.—At the highest summit of his profession,—in the very foremost rank of the senate, his satisfaction could only be heightened by reflecting on the past, and by retracing the steps of a career free from every unworthy art, and unaided by a single act of equivocal or selfish policy. Nor was the tenour of his domestic life less pure and even. In all its various relations,—whether as a husband, a father, or a friend,

—whether retired into the bosom of his delighted and affectionate family, or mingling in the social circle of remoter kindred and acquaintance, he seems to have been equally blest. It was only a few months before the event which was to close the scene of his rare felicity on earth, that the following conversation occurred between himself and a gentleman who had the happiness to be numbered amongst his friends. They were walking together in the neighbourhood of Hampstead, at the close of a delightful day in that heavenly summer. Sir Samuel Romilly said, "*How I feel the tranquillity of these lovely evenings!—What a contrast is it with our busy, turbulent pursuits!*"—His companion answered, "*We ought always to be cautious of these feelings produced by contrast.—You may perhaps have felt it, as I have, when coming from the house of a dying or deceased friend, you walk into the street of a great city, and feel the total indifference of the passengers to all that is near and dear to you.*"—He replied, "*It has been my good fortune never to know domestic affliction; but I dare say, it must be so.*"—

"But, mortal pleasure, what art thou, in truth?
The torrent's smoothness ere it dash below."

The declining health of Lady Romilly, which had been to her husband for several months a source of uneasiness and anxiety, at length excited in his bosom the most serious alarms. During a residence of nearly two months at Mr. Nash's seat in the Isle of Wight, where he had taken her for the benefit of a milder air, his mind continued in a state of unceasing agitation,—fluctuating, at each turn of her disorder, between alternate tides of hope and despair. In a letter to his friend, Mr. Dumont, of the 27th of September, he says, "Since I last wrote to you, Anne has been worse, and was certainly considered by both her medical attendants as being in some danger. She is at present a little better, but for myself I still appre-

hend the worst. I take care to let neither her nor the poor children see the anxiety I feel, but it costs me a good deal.—With all this, do not suppose that I have not quite resolution enough to undergo every thing, and to preserve my health for my children's sake."

In another letter addressed to the same friend on the very next day, he says, "I cannot, after my letter of yesterday, suffer this post to go without telling you, that my dear Anne is *better*—not very considerably, *but yet she certainly is better.*"

A few days after the date of this letter Mr. Dumont arrived at Cowes, where he found Lady Romilly so much better as to be able to spend two or three hours each day in the society of her friends. This temporary improvement, however, was soon followed by a severe relapse, and by several days of acute suffering, during which the anguish of her husband could be only equalled by the pious fortitude and resolution with which he endeavoured to suppress his feelings. Though for a long period he was either a stranger to sleep, or had his sleep disturbed by the most terrific dreams; though at times he believed his faculties to be impaired, and began even to entertain fears of mental derangement *, he still recollected the duties which he owed to his family, to his country, and to his

* In one of his testamentary papers, dated the 9th of October 1818, he says—"I am at the present moment of perfectly sound mind and in the full possession of all my faculties: but I am labouring under a most severe affliction, and I cannot but recollect that insanity is amongst the evils which mental afflictions sometimes produce, without observing to myself that, that unhappy lot may possibly, at some time, be mine. If ever I should become insane (which God forbid), it is my earnest desire, that while I continue in that state, the following bounties may be paid out of my income during my life, and may be considered as a part of the expenditure, which I certainly should have made if I had continued capable of managing my own affairs."

Creator. To the last moment of his reason he continued to struggle with the sorrows which were overwhelming him. Whatever time remained to him from his attendance in the sick chamber of his wife, was devoted to his children and surrounding friends. With Mr. Dumont, in particular, he frequently held the most intimate and unreserved conversations, entertaining him with prospects of the future, and with plans for the education and establishment of his children in life.

About the middle of October his sister, whom he tenderly loved, had come with her daughter to the Isle of Wight, at his own express desire, and was followed by the two sisters of his wife; but though grateful for this proof of their kind attention and regard, he met them without a tear, or any visible emotion. Lady Romilly died during the night of the 29th of October, but the event was not communicated to her husband until the following morning. He heard it with apparent resignation; and without any violent effusions of grief. On the same day he was removed by his anxious friends from the scene of his sorrows, and arrived in London, by easy stages, on the 1st of November. During his journey he had been frequently much agitated, and as he approached home, his feelings became more violent. On one of these occasions, as he was shutting his eyes and wringing his hands, Mr. Dumont, who had accompanied him from the Isle of Wight, took the hand of his daughter and placed it in his; upon which, opening his eyes, and casting on his friend a look expressive of gratitude and affection, he tenderly embraced his daughter.

On his arrival at his residence in Russell Square, he made repeated but ineffectual efforts to compose his mind, and throwing himself upon a sofa, joined his hands together for some moments, as if in a state of prayer. He was now apparently calm, but his tranquillity was more frightful to his friends than even his former violence. It had the aspect of a man dying from some internal wound.—Dr. Roget, who had

attended his uncle from the commencement of his illness, and watched over his couch with all the pious care and devotion of a son; was, soon after their arrival in London, joined by Dr. Marcet, and on the following morning by Dr. Babington. But their efforts were vain: long suffering had suspended the faculties of their unhappy patient. His mind became deranged—his heart was broken—and in the violence of frenzy he terminated his own existence.

Such was the end of Sir Samuel Romilly; and let no man say, that, under like circumstances and like sufferings, his own would be different. Had *we* suffered and survived what *he* suffered and did *not* survive, we, perhaps, might have thrown a stone at his memory. No!—for then we should have been better able to judge of his sorrows and to compassionate his despair.

Sir Samuel Romilly died on the 2d of November, and was interred in the same grave with his wife, at Knill in Herefordshire. United in life, in death they were not divided. They left seven children, six sons and one daughter, to lament their loss.

In person, Sir Samuel Romilly was tall and justly proportioned, with a countenance regular and pleasing, but tinged with deep shades of thought, and susceptible of the greatest or tenderest emotions. His manners were distinguished by singular modesty, unaffected simplicity, and the kindest attention and regard to the wishes and feelings of others. His habits were temperate, studious, and domestic. No man ever indulged less in those pursuits which the world calls pleasure. He rose regularly at six o'clock, and was occupied during the greater part of the day, and frequently to a late hour at night, either in study or laborious attendance to his professional and parliamentary duties. What little intervals of leisure could be snatched from his toils, he anxiously devoted to domestic intercourse and enjoyments.—Moderate in his own expenses,

he was generous, without ostentation, to the wants of others, and the exquisite sensibility of his nature was never more strikingly displayed than in the fervent zeal with which his professional knowledge was always ready to be exerted for the destitute and oppressed,—for those who might seem, in their poverty, to have been left without a friend.—Even to the last, when sinking under the weight of domestic affliction, when anticipating, as its possible result, a wretched life of mental malady and darkness, he was still intent on the welfare and happiness of those around him*. The religion of Sir Samuel Romilly was like his life, pure, fervent, and enlightened. Unclouded by superstition or intolerance, it shone forth in pious gratitude to God, and in charity to all mankind.

The attainments of Sir Samuel Romilly in ancient and modern history and literature, and in the English, French, and Italian languages, appear, even at an early age, to have been considerable, and were daily augmented in spite of the multiplying toils which almost engrossed his later years.—Besides his reply to Dr. Madan's "Thoughts on Executive Justice," and an article which appeared in the 57th number of the Edinburgh Review, he was the author of some unpublished works,—of a Translation of Sallust,—of a Journal of some part of his own life,—and of an unfinished work on the Criminal Law. Of the latter he says in one of his testamentary papers, that it is not in a state fit for publication, but that if, in the opinion of his friends, it should contain any hints or observations calculated to be of service to others treating of the same subject, they may publish such extracts or detached parts. "That such a publication," (he adds) "may be injurious to my reputation as an author or a lawyer, I am indifferent about; *if it can be in any way useful, it is all I desire.*"

* See page lviii. *note.*

Of the Speeches which have been collected in these volumes, many are either fragments or mere outlines of their originals; yet imperfect as they are, they still reflect the pure and intelligent mind of their author. Uninfluenced by vanity, inaccessible to the motives which frequently sway more ordinary minds, Sir Samuel Romilly never rose in Parliament but at the call of public duty—to defend the wretched and oppressed,—or to vindicate some great principle of insulted freedom and constitutional law. The lustre which enshrines his name, was the reward not the incentive of his actions. He would have pursued the same undeviating course of public duty, although the doors of the House of Commons had been closed, and the conduct of its members had never been discussed beyond the precincts of their own walls.

Occupied as his hours were with a burden of professional business, heavier perhaps than had ever fallen to the lot of any preceding or contemporary lawyer, he could have had but little leisure for the study and arrangement of his arguments. They must have been for the most part unpremeditated,—following the fortuitous course of the debate, and only aided and embellished by that expansion of thought, and variety of knowledge, which neither the dull circle of precedent nor the unremitting labours of business had been able to extinguish or confine. Yet with how few even of those who had made politics and eloquence the sole study and practice of their lives, will he not admit of a favourable comparison!

Mr. Burke has said of the law, that, "it is one of the first and noblest of human sciences; a science which does more to quicken and invigorate the understanding than all the other kinds of learning put together; but that it is not apt, except in persons very happily born, to open and liberalize the mind exactly in the same proportion." The truth of this remark must, I fear, be obvious to all who are acquainted

with the bar, and accounts, in a great degree, for the very ordinary figure which many even of our most eminent lawyers have made in either House of Parliament. To this general rule, however, Sir Samuel Romilly was a splendid exception. He was too much a philosopher to carry the narrow prejudices and practice of Westminster Hall into the science of legislation. He could distinguish "between the duties of a legislative assembly, and a court of judicature—between the letter and the spirit of law itself—between the principles of a science and circumstances which accompany the application of it, in the prejudices and peculiarities of its professors*."

It was in this spirit that he attempted the reformation of the criminal code. "Though gifted" (says Sir James Mackintosh) "more than any man I have ever known, with a sensitive, or, if I may say so, a shrinking humanity, which accompanied him through the whole course of his busy life, and formed an indelible quality in his constitution, he silenced his feelings on this subject, and examined it with a calm regard to the public good and the general interests of his country." Reflection and experience had alike taught him how much more effectually the certainty than the rigour of punishment operates in the suppression of crime. He saw in the English code nearly two hundred offences all equally punishable with death!—What had been the effect of this indiscriminate severity? Had fraud and robbery decreased by being raised in the criminal scale to a level with murder?—Sir Samuel Romilly believed (and who that has given his thoughts and observation to this subject does not believe) that the necessary tendency of so unequal a system is to defeat rather than to promote the objects of its enactment; that it deters the injured from prosecution; that it

* Parr's Characters of Fox, vol. i. p. 195.

sanctions a latitude in the verdicts of juries frequently at variance with the obligation of truth; that it vests a discretion in Judges, mischievous in the highest degree, because subject to no fixed rule, but altogether dependent upon the various tempers, habits, and principles of the different individuals by whom it may be exercised; and finally, that it renders the execution of the law itself, a source of sympathy and commiseration for the fate of the criminal, instead of an example to deter others from the perpetration of his offences. Was any test required in favour of a milder policy? Was the seal of experience necessary to give authority to the dictates of reason? England had only to look at those nations with whom an opposite system prevailed, and more especially at her own Transatlantic kindred, to discover proofs, not less striking than consolatory, of the alliance which must ever exist between humanity and good government.

Mortified as his benevolence must have necessarily felt at the repeated obstacles which it was destined to encounter from the clamours of prejudice and ignorance, he never suffered his mind to sink into unbecoming apathy. Like the good citizen of ancient days, he would not despair of the fortunes of his country; but, though foiled in his hopes of establishing the right, still persevered in his efforts to meliorate the wrong. His views, indeed, were as far beyond the jurisprudence of this age, as the philosophy of Bacon was beyond the logic of the schools in his day. But, like Bacon, he has anticipated and opened the way to future improvement. The seeds which have been sown by his hands are taking root.—May they quickly rise and bring forth the excellent fruits which his benevolent and enlarged mind contemplated for the benefit of the human race!

Nor were his general opinions less liberal and enlightened. The love of liberty (with too many the effervescence of momentary passion) was in him a fixed and predominant prin-

ciple, associated with the moral dignity and happiness of his fellow-creatures. The generous ardour of youth had, in his bosom, sustained no chill, from the influence of advancing years. He was a worthy descendant of those ancestors who had hazarded all earthly prospects for the sake of conscience, and who had shewn by their patient example, how infinitely preferable are the pains of poverty and exile to the most splendid favours that apostacy can claim.—In the annihilation of that traffic, which for so many years had desolated Africa, and degraded Europe, he bore a distinguished part. To peace, the offspring of justice and moderation,—to the diffusion of knowledge by education and a free press,—to the repeal of tests and of all other laws presuming either directly or indirectly to interfere between the heart of man and his heavenly Creator,—to the happiness of his own and of every other nation,—or, to sum up all, to the great principles of civil and religious freedom, in every form, and wheresoever assailed—he was a zealous and consistent friend from his early youth to the latest hour of his virtuous life. What Englishman has forgotten his struggles in defence of that dearest right, and security of all other rights,—the Act of Habeas Corpus? — Who, that is able to comprehend the claims, or to appreciate the blessings of liberty, but will remember with gratitude, his unceasing resistance to that reproach of our age and country, the Alien Bill?

On the great question of Parliamentary Reform (the popular test of all public men) he was uniformly open and sincere. Averse from each extreme, either of intemperance on the one hand or of lukewarmness on the other, he supported by his arguments and his votes, every proposition for an inquiry into the state of the national representation. In common with the late Sir William Jones and with many eminent individuals, he had been a Member of the Society for Consti-

tutional Information. But without condemning the speculations of those who loved to indulge either in researches after past, or in visions of future, excellence and perfection, he confined his own labours on this as on every other question of reform, to the establishment not, perhaps, of the most ancient, or abstractedly considered, the best system, but of that which, in a practical point of view, appeared to him to be least repugnant to the disposition and habits of the age and country in which he lived. He neither confounded the forms of polity with the ends of government, nor contended for civil rights but as the best means and necessary instruments of social happiness.

Sensible how little the exertions even of the wisest and most powerful can accomplish, single-handed and unsupported, Sir Samuel Romilly had been in the habit of acting with a party; but he never suffered party feelings or party views to narrow his mind and to fetter his exertions for the public good. Never, from personal motives either of interest or affection, did he, for a moment, compromise those high principles which he deemed alike essential to the character of a legislator and a man!—This was exemplified on several occasions, and on none more strikingly than in the discussions which, at various times, arose on the Irish Insurrection Acts, —on the affairs of the Carnatic,—and on the question of Parliamentary Privilege. On the latter occasion more particularly, he had the misfortune to be at variance, in his opinions, with many of his most valued friends.

The conduct of public men in a country like England, will always be exposed to a certain portion of commendation or censure independent of its own intrinsic worth. With many, therefore, to applaud the actions of Sir Samuel Romilly, would be to pass judgment upon their own. To some, his highest virtues may possibly appear in the light of errors

or even failings.—Yet there is one feature, at least, in his character, which not even party rancour will venture to dispute. I allude to that beautiful CONSISTENCY which marked the whole tenour of his public life; a consistency, which might have pointed him out as an object of admiration and respect at any time or in any country: but which was more pre-eminently striking and delightful "in a tame and easy age of flattery and servitude," and in a profession, whose members, whatever may be their individual merits, are certainly not conspicuous as a body, either for the generous ardour of their enthusiasm, or for the unbending constancy of their principles, in matters connected with the public weal. But the zeal of Sir Samuel Romilly was too sincere to allow him to remain neutral whilst the great interests of freedom and humanity were at stake. How frequently were health, professional emolument, and what was a thousand times dearer to his heart than either,—the pleasures of domestic life,—the precious sacrifices to a rigid and imperious sense of public duty!—For a character built, like his, upon the firm basis of religious and moral principle, power which corrupts the wisest, had no temptations. The rocks, which had proved fatal to the reputations of so many of his predecessors, presented no dangers to him. Although a lawyer of the Crown, he never ceased to be an advocate for the people. The most unwearied enemy (if virtue, like his, can be supposed to have had one) might be challenged to produce a single act, a single sentiment that fell from him, whilst in power, to detract from the purity and weight of his subsequent conduct as a member of the Opposition. No political prosecutions,—no restraints upon free discussion,—no opinions hostile to liberty,—no stretches of prerogative or perversions of law, degraded the office of Solicitor General, whilst in the hands of Sir Samuel Romilly. He passed its ordeal unhurt, and

left an example of moderation and justice which remains to be followed by his successors *.

Nor was the reputation which attended Sir Samuel Romilly in the profession to which he had been bred, less brilliant or less deserved. It would have been enough for his immortality, had he been known only to the world as the most profound and enlightened lawyer of his age. His persevering industry, his ready and retentive memory, his various learning, and great talents, crowned as they were, with integrity, without a stain, rendered him the pride and model of the bar, and enabled him to acquire, conduct, and bring to a successful issue a larger portion of business than had perhaps ever fallen to any other individual. No man had ever more sedulously studied, or was more deeply versed in the elements of jurisprudence. By long habits of early discipline, by patiently climbing what Bacon calls the vantage ground of science, he had effectually trained and tempered his mind for that splendid

* In one of the discussions on the Mutiny Bill in 1806, the constitutional sentiments expressed by Sir Samuel Romilly, and the strong terms in which he deprecated standing armies, and the use of barracks, inland fortresses, and whatever tended to separate the soldier from the citizen, were such as to astonish all who were accustomed to the language of persons in his situation. Sir William Lemon (one of the members for Cornwall, and a man the distinction of whose long and honourable life it is, never to have given a vote against the liberties of his country,) observed to the House, on the occasion, that, *he had never before heard such constitutional sentiments from any law officer of the Crown, and that he was bound both for his constituents and himself, to offer his sincerest gratitude and acknowledgment to the hon. and learned gentleman who had expressed them.*—It is to be lamented that the Speech of Sir Samuel Romilly here alluded to, has never been correctly reported.—The same praise, which is due to the conduct of the Solicitor General of that period, attaches equally to his able and constitutional colleague, Sir Arthur Piggott.

career, which, for so many years, he was destined to run without a rival. He was not only practically acquainted with the Common, Statute, and Civil Law, but had been enabled by the friendly lights of History and Philosophy to explore their remotest sources and deviations, to estimate their influence on society, and to discern their respective merits and defects, either as contrasted with each other, or with the polities and institutions of other countries.—With such foundations to build on, who will wonder at the lofty eminence which this great man attained in his profession?—Powerful without effort, methodical without apparent division or arrangement, he was seen to shed new light on the most exhausted, and to unravel the most complicated subjects with an intuitive rapidity, precision, and strength, that awakened the interest, and rewarded the attention of the dullest hearers. How often have I seen him, when leaving, as it was his custom, to meaner minds the tacks of chicanery and quibble, he arrived at his destination by some nearer and broader but previously undiscovered track;—when scattering to the winds the mists of technical sophistry which involved his course, he steered in triumph through a sea of conflicting precedents and opinions into the haven of established principle!—There perhaps never existed a man, who, from his capacity for business, his variety and depth of knowledge, and his exalted notions of duty, was more eminently formed for the highest situation of law.

What Sir Samuel Romilly was in private life, I have already endeavoured to shew; and though the picture of his character in that, as in every other point of view, in which he is here presented, may be most imperfect, it will not, I hope, in any of its more prominent features be found to be exaggerated. If I have not dwelt on his defects, it is because I am acquainted only with his virtues. But whatever may have been the former (and as a man, we are not to suppose him exempt

from the common lot), they were wholly eclipsed and lost in the superior splendour of the latter. "Let him be weighed never so scrupulously, and in the nicest scales, he will not be found, in a single instance, wanting in the charity of a Christian, the firmness and benevolence of a patriot, the integrity and fidelity of a man of honour*."

How deeply his loss was mourned,—how justly his virtue was appreciated, other language, more forcible than any expressions of mine, may perhaps serve, in some slight degree, to shew. Passing over the eloquent, the affecting tributes of regret and esteem which were paid to his memory by Earl Grey, Sir Francis Burdett, Sir James Mackintosh, and others, who had taken views of the public interest not dissimilar from his own, let us listen to the testimony of one, whose opinions were at least exempt from the influence of political partiality. In presenting a petition to the House of Commons for the revision of the penal code, Mr. Wilberforce thus expressed the general grief: "To this question it is impossible to advert, without expressing, though faintly, my deep regret, in common with the whole House and Country, that it is now left for me to raise my feeble voice in a cause which has been so often and so ably advocated by one whose name will be recorded among the benefactors of mankind, and whose memory will be fondly cherished by all who reverence either public or private virtue;—a man whose general knowledge was only equalled by his professional attainments, and who brought to the subject all the lights of the understanding, and all the advantages of experience.

"The obligations of the country to the unwearied labours of this most distinguished and lamented individual, are acknowledged by friends and enemies,—if, indeed, the term *friends* can be applied to those who loved him with devoted enthusi-

* Fox's History of James II.

asm, or *enemies* to those who, whilst they resisted his propositions, admitted the benevolence of their object, and the admirable intentions of him who introduced them.—He was a man in whom public and private excellence were so united and so equally balanced, that it is difficult to say which had the predominance: those, who knew him only as a member of Parliament, will probably hold that his public principles had the predominance; while those, who have enjoyed his friendship, will feel satisfied that the general benevolence of his views and projects was even exceeded by the endearing qualities of his domestic life."

SPEECHES,

MUTINY BILL—LIMITED SERVICE.

June 2d, 1806.

The subject of debate in the House of Commons was a clause introduced into the Mutiny Bill, for limiting the period of military service to seven years. Sir Samuel Romilly, then Solicitor General, supported the measure. He replied to various objections urged against the form in which it had been brought forward, and showed, in the clearest manner, the advantages, and consequent inducements to enter into the service, which the change would hold out to Recruits.

With regard to the policy of enlistment for a limited period, considered constitutionally, he dissented entirely from those who had contended that it was a dangerous innovation. He had always understood, that in the best times of British history, the indefinite term of enlistment was considered as a substantial ground of jealousy against

Standing Armies. The preference given to the Militia was founded expressly on the circumstance of their being enlisted for a limited time. For a while they took up the character of the Soldier, afterwards to resume that of the Citizen. Nor would this jealousy of one class of men, and preference of another, be surprising, when it was considered how inestimable were the privileges which a Recruit resigned on entering into the army, and how different must be the character of a man who resigned them for ever, and the man who surrendered them only for a short period. And here, he could not refrain from quoting the opinion of a venerable Judge, whose sentiments, on every subject, were such as to entitle him to the most profound attention. Sir William Blackstone has said, that "in a land of liberty it is extremely dangerous to make a distinct order of the profession of arms. In absolute monarchies, it is necessary for the safety of the Prince, and arises from the main principle of their constitution, which is that of governing by fear; but in free States, the profession of a Soldier, taken singly, and merely as a profession, is justly an object of jealousy. The Laws and Constitution of these kingdoms, know no such state as that of a perpetual standing Soldier, bred up to no other profession than that of war; and it was not until the reign of Henry VII. that the Kings of England had so much as a guard about

their persons."—"The military power, when such a one is necessary to be kept on foot, should wholly be composed of natural subjects; it ought only to be enlisted *for a short and limited time*. The Soldiers also should live intermixed with the People; no separate Camp, no Barracks, no inland Fortresses, should be allowed. And, perhaps, it might be still better, if by dismissing a stated number, and enlisting others at every renewal of their term, a circulation could be kept up between the Army and the People, and the Citizen and the Soldier be more intimately connected together*."—What had happened since this luminous author published his Commentaries, to diminish the jealousy of a Standing Army? Was it because the Standing Army was three times as numerous? Was it because it had been thought necessary to establish Barracks? Was it because a great military despotism had been expanding itself over Europe? And because every advancing year saw the vestiges of liberty disappearing from amongst surrounding States?

Coinciding, as he did, in the sentiments which he had just quoted, he could not but give his support to the proposed measure, which, while it tended to exalt the character of the Soldier, would be equally favourable to the liberties of the People:—It would make our Soldiers Citizens,

* Black. Com. Book I. p. 408—414.

and our Citizens Soldiers. It would cherish that spirit of freedom and independence, which, in all ages, had constituted the real greatness and glory of this Country.—The corporeal advantages of our own troops over those of the enemy; their superior skill, discipline, and power of sustaining privation and fatigue, could be but small. In one view, indeed, they possessed the advantage,—the superiority of the cause in which they were engaged. The armies of our enemy fought only to extend the glory and to satiate the ambition of a Master; our Armies fought for their own rights and those of their country. If our Soldiers triumphed, it was the triumph of justice and freedom over injustice and despotism. If they fell, they fell martyrs to patriotism and the love of liberty.

Sir Samuel Romilly then proceeded to obviate the objections which had been urged against the proposed plan on the ground of expense, and concluded with saying, that, deeply as he lamented the burdens which had been imposed upon the Community,—heavy as he felt them to be, he was convinced, that the very poorest would cheerfully part with a portion of his scanty pittance to reward the valour of those who fought to defend that, without which property, and even life itself, were not worth the preservation.

ABOLITION OF THE SLAVE TRADE.

June 10th, 1806.

A RESOLUTION was moved in the House of Commons by Mr. Fox, expressive of the injustice, the inhumanity, and the impolicy of the Slave Trade, and pledging the House to its abolition with all practicable expedition. The Motion was seconded by Sir R. Milbank; and opposed by General Tarleton and Lord Castlereagh. Mr. Francis expressed his abhorrence of the traffic, but doubted the propriety of the proposed mode of proceeding as inefficient, and as calculated to create unnecessary delay.

The Solicitor General said,—" I certainly should have more cordially supported a Motion for leave to bring in a Bill for the total and immediate abolition of the African Slave Trade, than I do the present Motion. Yet although the Motion does not go so far as I could have wished, still I trust the House will think it ought to be adopted. If the Hon. Gentleman who spoke last but one (Mr. Francis) thinks it more expedient to proceed to the abolition of the Slave Trade immediately, there is nothing to prevent him from taking any measure which he may think desirable

for that purpose, notwithstanding the adoption of the Motion now before the House.

"The Noble Lord, who spoke last, says, that the Resolution is so vague and indefinite, as to be unintelligible. Now, Sir, I do not see that there is any ambiguity in the Resolution, for it only states, 'That the House, considering the African Slave Trade to be contrary to the principles of justice, humanity, and sound policy, will, with all practicable expedition, take effectual measures for the abolition of the said Trade, in such manner, and at such period, as may be deemed advisable.'

"Sir, it is far from being my intention, on this occasion, to go into the question of the Slave Trade,—a question which it is almost too late to argue. For what has been,—what can be advanced in support of its continuance, but assertions already disproved, and arguments already refuted? But though there remains nothing to be argued, it does not thence follow that nothing remains to be done. On the contrary, as an individual of this Country, I cannot but most seriously feel the reproachful situation in which we stand at this moment, with respect to the Slave Trade. The year 1796 was the utmost limit allowed for the existence of this most abominable and disgraceful traffic, and yet it still subsists!—The blame, however, is not altogether to be imputed to this House. It has not left its pledges on this subject wholly unredeemed. In the Ses-

sion before the last it passed a Bill for the abolition of the Trade, which was rejected by the House of Lords. Since that period, the measure has been again brought forward, but was lost here in a very thin House, and on a very unexpected division. May the vote of this night rescue the House from the reproach which it incurred by that event!

"Sir, it often happens to Nations as well as to Individuals, that they are guilty of the most immoral acts, from the want of courage to inquire into their nature and consequences. This, before the year 1789, was the case of this Country. In that year, however, this House had the courage to appoint a Committee to inquire into all the circumstances of the Trade. The Committee sat, and, after a painful and anxious investigation, reported to the House an immense mass of evidence, all tending to establish, beyond the possibility of dispute, that the African Slave Trade was carried on by rapine, robbery, and murder, by encouraging and fomenting wars; by false accusations and imaginary crimes! Who is there that does not shudder at the bare recital of these enormities? Who, without horror, can reflect that thousands, thousands of our fellow-creatures are thus annually sacrificed,—are thus torn from their families, their friends, and their homes, to be exported to foreign markets beyond the Atlantic, under circumstances more aggravated and

cruel, and in a state more deplorable and wretched, than, but for the undoubted fact, it would be imagined possible to convey them *alive*.

"Now, Sir, after all this has been proved;—after it has been ascertained by indisputable evidence, that this Trade cannot be carried on without the most iniquitous practices; that rapine, robbery, and murder are the foundations of it; that wars are fomented; that crimes are devised; that men are falsely accused, and on false accusations condemned, in order to supply its demands; that the most disgusting cruelties attend it, in the passage of its unhappy victims from their native home to the place of their slavery; that they are there subjected to a cruel and perpetual bondage; I do say that this Trade ought not to be suffered to continue for an hour. It is a stain upon our national reputation that ought instantly to be wiped away. Only since 1796,—since that period at which we once resolved to abolish this Trade, no less than three hundred and sixty thousand individuals have been torn by us from the coast of Africa! Such is the accumulation of guilt that hangs on the English nation at this moment! I cannot, therefore, suffer this subject to pass without expressing my most anxious wish to concur in the immediate abolition of a traffic, that has brought upon this nation such indelible disgrace.

"But it is said, that it will be necessary to

compensate those who now carry on the Trade for the loss which they must sustain by its discontinuance. This, Sir, will be a subject for future consideration. But granting, for the sake of the argument, and for the sake of the argument only, that this compensation is necessary, — granting that a debt be indeed due from the Nation to the individuals engaged in this traffic, still I would say,—make that compensation,—pay that debt,—do it at any price, rather than admit so detestable a principle, as that the debts of the people of England are to be paid with the blood of the people of Africa!—Yes, Sir, if a debt be really due, let it be discharged,—but not with the blood of our fellow-creatures. The people of England are not to consent that there should be carried on in their name, a system of blood, rapine, robbery, and murder; and that, merely because they may be called upon to make some compensation to those who are interested in its continuance!

"Sir, I do not see any reason to enter into the question generally, except to observe upon one point which has been stated by the Noble Lord who spoke last. He seems to think that there is no mode of abolishing this Trade but with the concurrence of the Colonies;—that we must obtain their consent to the measure,—that it must be left to their feelings! If so, I am afraid we shall never abolish it.—If we refer to the correspondence of the West India Governors, we shall find that no-

thing of this kind is to be expected, and that whenever we have expressed such a desire, the aim of the Colonies has been to disappoint us in the attainment of it. And I would take the liberty of asking the Noble Lord, whether he thinks this Country ought to endure the disgrace and the guilt of continuing this hateful traffic, until the period at which the Colonies shall consent to its abolition.

"I shall detain the House no longer. I have stated my reasons for desiring the abolition of the Slave Trade. I have assigned reasons why I could wish that not a moment of unnecessary delay should take place in the accomplishment of that good end,—in getting rid of this stain on our national character. I am of opinion that this resolution is consistent with that object, and therefore it has my entire concurrence."

On a division, the numbers were,

For the Resolution - - - -	114
Against it - - - - - - -	15
Majority - - - - - - -	99

FREEHOLD ESTATES BILL.

January 28th, 1807.

The Solicitor General. "Sir, I rise to move for leave to bring in a Bill for making the Freehold Estates of persons dying indebted, assets for the payment of their Simple Contract Debts. The injustice of the present Law on this subject is so glaring, and the remedy for that injustice so obvious, that I should have felt it unnecessary to do more than barely to state the object of my Motion, did I not know that a similar measure had been once unsuccessfully proposed.

"Gentlemen are aware, that by the law of England a man seised of a Freehold Estate may contract Debts to any amount without subjecting the fee of such property to any responsibility for their discharge, provided he has not entered into any Bond or Security under seal. Neither Book Debts, nor Bills of Exchange, affect Freehold Estates.—What, then, is to prevent the owner of such Estates (if he be a man of extravagant habits, loose principles, or of that unmeaning profusion which prompts him rather to be generous than just), from defrauding his Creditors? He may have incurred Simple Contract Debts to an

enormous amount, and instead of leaving sufficient means, at his death, to satisfy his Creditors, he may be found, with a caprice well worthy of his prudence, to have transferred to some stranger the whole of that Estate which had been the source of their confidence, and which ought to be the fund of their remuneration. No matter how capricious or wanton the will itself, that constitutes this stranger Heir. His title in *law* is indisputable to that property which, in common *justice*, ought to have been another's. He may look with indifference upon the claims of Creditors, who have, unfortunately for themselves, founded them upon no stronger principle than the honour of their Debtor.—But it is not for the Legislature of a great commercial Country, to look with indifference upon any measure that tends to shake that generous confidence which is the support of British Credit, and the pride of British Commerce.

"But even if the law itself was not objectionable, still the *abuses* of which it has been productive, would sufficiently warrant its abolition. How many have unhappily occurred even within the recollection of the present age! How many instances might I relate of men, possessed of Freehold Estates, who finding themselves sinking beneath accumulated embarrassments, have resolved on the desperate alternative of depriving themselves of existence, and thus, by a sort of posthumous injustice, to put out of the reach of their

Creditors every possible means of recompense or redress!' Strange as it is that a law which sanctions such abuses should be permitted to exist in any country, it is still more unaccountable that it should be peculiar to England.'

"On the continent, Heirs are subject to the debts of those from whom they inherit, and grateful is it to observe the pious industry with which they persevere in their efforts to redeem the faith they justly conceive to have been pledged by their Predecessors. Why a Law of such injustice has continued in force in England down to the present day, it is difficult to discover. To trace its origin, it is necessary to recur to feudal times, when allodial property was annihilated, and when every Proprietor held of some superior Liege. The military nature of the tenures and the relations subsisting between the Vassal and the Lord, rendered alienation impracticable. The former could no more transfer his feud without the consent of the latter, than the latter could his seignory and protection without the consent of the former. Subsequently, and as the feudal system began to be considered in the light of a civil rather than a military establishment, the rule became less rigorous. The Proprietor was at first allowed to alienate half of his property, and finally the whole. Still, however, the law, as far as it exempts Landed Property from being subject to simple contract debts,

has been permitted to retain its primæval rigour, having survived the reason of its original existence for more than five hundred years.

"Nor is the inconsistency of this Law less worthy of remark,—loose, when it should be strict,—and in every other respect so unrelentingly severe.—In the case of Personal Goods and all species of Chattel Interest, its operation in enforcing the payment of debts is known to be summary, decisive, and efficient. While it screens the freehold Estate of the idle, the dissipated, or dishonest Debtor, it gives up the person and property of his perhaps struggling Creditor to all the fatal consequences of some unforeseen vicissitude of trade,—the little he had (his all) to bankruptcy, and himself to the moral as well as physical contagion of a gaol, where he is doomed to linger out the wretched remnant of his days in unavailing sorrow, unless restored to the world by one of those accidental interpositions of the Legislature, which annihilates all engagements, and cancels every contract, for the purpose of alleviating the stern rigour of the Law, and of relieving the capacious prisons of this Country from their too numerous inhabitants.

"I should be sorry to be thought illiberally severe upon those Heirs, who may have allowed debts, thus contracted, to remain unsatisfied, for I know how easy it is to contemplate sacrifices which we are not ourselves called upon to make.

These Heirs, too, have a right to urge the Law as their guide; and if reproach rests any where, it is certainly first due to the Legislature, which has so long sanctioned the evil."

Sir Samuel Romilly then went on to show the attempts which had been vainly made in Courts of Equity to mitigate the evil by "Marshalling of Assets*;" and argued, that the only just and effectual remedy would be, by putting Simple Contract Creditors on a footing with Special Creditors.—He concluded by moving for leave to bring in the proposed Bill†.

Leave was given.

ABOLITION OF THE SLAVE TRADE.

February 23rd, 1807.

Lord Howick moved the Order of the Day for the House to resolve itself into a Committee on the Bill for the Abolition of the Slave Trade. The

* Where Specialty Creditors, having their election of resorting either to the Heir or to the Executor, exhaust the personal fund, a Court of Equity will allow the Simple Contract Creditors and Legatees to stand in the place of the Specialty Creditors, and to recover from the Heir, the amount of what has been taken from the Executor.—This is called Marshalling of Assets.

† This excellent Bill was lost on the third reading.

Motion was supported by Mr. Roscoe, Mr. Lushington, Mr. Fawkes, &c. and opposed by General Gascoigne and Mr. Hibbert. Mr. Bragge Bathurst wished to defer the Abolition to a more distant period.

The Solicitor General said,—"A question, I think, of more importance than the present never came before this House. So anxious am I that it should not only pass, but pass by a great majority, that I cannot but express my regret at the sentiments which have fallen from a Right Hon. Gentleman, who has spoken recently in the Debate. To me it is quite evident, that the most serious dangers to which the cause is exposed, are to be apprehended, not from the avowed adversaries of the Abolition,—not from the claims of Liverpool Merchants and Planters, who from motives of private interest shut their ears against the cries of humanity and justice; but from those, who, whilst they seem to concur in the propriety of the proposed measure, are still endeavouring by specious pretexts and plausible objections to postpone its execution to a distant day. It is only by arguments of this description, by proposals of gradual, instead of immediate abolition, that this detested Traffic continues to exist at the present hour.

"But it is contended, that, though we should accede to the wished-for delay, we may still introduce regulations for improving the condition of

the Negroes, and removing many of the evils which are now admitted to exist. Sir, regulations have been tried, and tried in vain. The Assembly of Jamaica tells us, that every thing that can be effected by such means, has been already done. We must, therefore (were it only for the sake of those who are already in bondage), resort to this measure. When the Trade itself shall be abolished; when the Planter shall be altogether precluded from the means of supplying his losses, by fresh importations of Slaves, he will learn the necessity of resorting to a milder treatment, and of cherishing the lives of those who remain within his power.

"A Gentleman, Sir, who has spoken during this night's Debate, imagines, that, if this Traffic is at once abolished,—if the markets are suddenly stopped,—the dreadful consequence must be, that the numerous bands of Negroes brought from the interior of Africa to the Coast, for the purpose of sale, will be all inevitably massacred. That Hon. Member, Sir, has said much of the assertions of a Noble Lord; but, I should be glad to know, where is the evidence to support this bold proposition? Is there a single witness who has spoken of these massacres, as they are termed, in any way which is deserving of credit? Not only have we no substantial evidence of any such facts, but we are furnished with testimony establishing the direct contrary. Mr. Park, who has penetrated

farther into the interior of that vast Continent, than any other traveller, assures us, that these massacres do not take place, and that the only consequence of the stoppage of the market is, that the Negroes are employed in their own Country, certainly in a state of slavery, but of the mildest sort, and contrasted with that of the West Indies, a state of perfect freedom.

"There is one subject, Sir, on which there has been considerable contradiction, both in evidence, and in argument; I mean, the manner in which the Slaves are obtained in Africa. It has been sworn, that they were all of them either Prisoners taken in war, or Criminals condemned to slavery as a punishment for their offences. Can any one, reflecting on the facts before him, give credit to this allegation? Can any one imagine, if such were really the case,—if the wretched victims of this Trade were only captives and offenders, that we should so frequently behold, not merely individuals, not one or two out of a particular circle, but whole Families, Husbands, Wives, Parents, and Children, all swept away at the same moment from their native country?—Satisfactory as this reasoning may be, it is not all. Sir William Young's Commonplace Book furnishes abundant evidence, in confirmation of it. In the year 1797, we find, that no less than 34,984 human creatures were consigned to never-ceasing bondage. When His Majesty's arms conquered the province of De-

marara, there was a demand for 23,000 additional Negroes, and they were furnished without hesitation or difficulty; and afterwards, the number of 57,000 was as quickly found as the 34,000 had been before. Can it be supposed, can it be imagined for an instant, with this evidence before us, that just at the very moment when such increased supplies were wanted, the Continent of Africa became so suddenly depraved,—its wars so dreadful,—the crimes of its inhabitants so numerous, as, at once, and in the ordinary course, to provide for those immense demands?—No, Sir, such things are incredible; deserving only to be received as the suggestions of interest and falsehood,—as delusions created to conceal the deformity of injustice, and to dress out cruelty in the graces and attributes of insulted humanity.

"Let not the case, however, rest here. We will examine further, lest we should even yet be mistaken. We learn from Sir William Young, that in a subsequent year, the demand for Negroes was to the number of 55,628, and that in the following, it sunk as low as 34,000; and yet, though the Trade in this latter instance was so greatly diminished, did we hear of any massacre of those superfluous numbers that might be supposed to remain on the coast of Africa? No, Sir; notwithstanding all that has been urged upon the subject, I may confidently affirm, that no such event has ever occurred. For the most part, in

deed, the supply, as in other articles of traffic, will be found to have been regulated by the demand. The quantity and quality necessary, whatever it might be, was provided for the market. Were Females in more particular request? A proportionate increase was immediately discovered to have taken place in the guilt of that sex. Was there an additional demand for Children? The same consequence ensued to them. Children became the chief delinquents of the State, and were of course condemned to bondage, as a just atonement for their offences!

"But some of my Right Hon. Friends think, that if the Bill passes into a Law, there will be great danger of an insurrection among the Blacks in the West Indies; and one Gentleman said, that that danger could not in any other way be avoided, than by fixing a certain but more distant day when the Slave Trade should cease, which would put an end to all fear of discontent among the Blacks or the Whites. Has not this been already done? Has not a trial been made; and was not the year 1796 the time fixed for the termination of the Trade? Since that period, however, changes are said to have taken place, and Counsel are brought to your Bar, to tell the House, that the Islands in the West Indies are incapable of keeping up their population; and the reason they assign for it is, that the disproportion of the sexes is as five to one. Thus, Sir, does it appear,

that, notwithstanding all this notice, notwithstanding they have been allowed all this time to increase the number of females, the disproportion is still to the extent they mention. It is, therefore, obvious, that there remains but one way of proceeding, and that is by the immediate and total abolition of the Trade. A fear will then be excited in the minds of the Planters, lest the Slaves which they already possess, should be reduced in number. They will learn the necessity of treating these unhappy Beings as fellow-creatures, —of giving them the comforts of life,—and of permitting them to marry and have families.

"With regard to the Laws of the Islands upon this subject, we are told by General Prevost, that they are considered in the West Indies, as merely a political measure. All that the African can have to depend upon, is the mercy and sympathy of his Master; for no regulation we can make will operate as a protection against ill usage. Indeed, we have the authority of the Chief Justice of the Island of St. Vincent's to say, that it would be absolutely impossible to enforce any Laws for the benefit of Slaves against the Planters; and his evidence will be considered as less doubtful upon this point, because he is an enemy to the Abolition of the Trade.

"There is a case, Sir, mentioned in the Report of the Privy Council, the farther particulars of which I have learned from an intimate Friend,

who was himself a witness to the transaction. A merchant, resident at Basseterre, in the Island of St. Christopher's, of the name of Herbert, was the owner of two Slaves, a Girl and a Boy, of seven or eight years old, whom he was in the constant habit of beating with the most wanton barbarity. The neighbours were disturbed by their cries, and one day entered his dwelling, where they found the poor children in a most miserable state; their little bodies covered with bruises and wounds, and their mouths and faces lacerated in a shocking manner by gags, with which their merciless master had been in the habit of endeavouring to stifle their cries. The Children were carried before a Magistrate, who, though convinced of the cruelty of Herbert, was at a loss how to punish him, as it was not known that a master had ever been called to an account, or could be called to an account, for any injury to his Slave, short of death or mutilation. A warrant was however granted for the apprehension of Herbert, and the children were committed to the care of the Deputy Provost Marshal. The case was brought to trial before a special Jury, and the facts, as now stated, appeared clearly in evidence. The Jury, however, after long deliberation, brought in a verdict of—'Guilty, subject to the opinion of the Court,' if immoderate correction of a Slave by the master is a crime indictable.' The Court decided in the affirmative; and what was the punish-

ment that followed? A fine of forty shillings currency, equal to about thirty shillings of our money!

"It happened, in the mean time, that the case had excited general interest throughout the Island. The circumstance of Herbert's having his Slaves taken away from him, became a subject of general conversation, and his cause was espoused by almost all the lower class of Whites in the Island, and by many persons of consideration and opulence. He even brought his action against the Deputy Provost-Marshal, for having taken the wretched infants into his custody. There is, Sir, a law of the Island, which declares, that no action shall be brought against a Ministerial Officer, acting under the directions of a Magistrate, unless they are both joined in the action; and this requisition not having been complied with, the Judge, who tried the cause, was of opinion, that the action could not be maintained, and therefore directed, that a Nonsuit should be entered. But the Plaintiff insisted that he would have a verdict, and the Judge repeated to the Jury the law upon the subject. It was, however, perfectly useless. The Jury remained locked up for forty-eight hours. At last, the Foreman represented that it was impossible for them to make up their minds, being equally divided in opinion; and in the issue, a Juror was withdrawn. Herbert brought his action again to trial before a special

Jury, which, notwithstanding the express words of the Act, and a clear direction from the Bench to find for the Defendant, brought in a verdict for the Plaintiff, though with only nominal damages.

"Now, Sir, let me ask, what would have been the effect of such barbarity as this man was guilty of, in this Country? Here, Sir, the public detestation would not have waited for the tardy execution of the law; the Master would perhaps have fallen an immediate victim to his own cruelty. But in that Island, the sympathy excited was for the oppressor,—not for the oppressed,—the indignation manifested was all against the Prosecutor who instituted, and against the Judge who tried, the cause,—not against the Wretch, whose barbarity had thus wantonly outraged the laws of justice and humanity!—What must that system of slavery be which can thus reverse all the ordinary feelings of Englishmen, making Herbert popular in the West Indies, though convicted of crimes which, in this Country, would have made him an object of public vengeance? And what hope can there be of protecting Slaves by law against *ordinary* acts of oppression, when such is the popular feeling even in *extreme* cases?

"A second indictment had been preferred against Herbert, but was abandoned in consequence of the popular feeling so strongly expressed in his favour. The poor Children were also ultimately restored to him; so that he might again exercise his cruelty on them with impunity.

"A similar instance of the public feeling occurred in Barbadoes, at the time when Lord Seaforth brought in a Bill to make the murder of a Slave felony. Though a man of great humanity, he was termed a Draco, who had come to write the laws for the protection of the Negroes in the blood of the Whites.—Such, Sir, is the treatment of those who endeavour to benefit the unhappy subjects of West Indian Slavery; and we know, from experience, that the laws of the Islands do not even treat the Negroes as human beings. Those laws declare, that the testimony of a Black Man, even though he be not a Slave, or the evidence of a Mulatto, cannot be received against an European, and yet a Slave may be admitted as a witness against a free Negro. Such are the cruel and unjust distinctions which our Colonial Institutions have created between the Blacks and the Whites. The Law punishes even the striking a White Man, though he be not the Master of the Slave, but a menial Servant, with the greatest severity. Nay, if an European attempts even to kill a Negro, and the Negro should strike the person attacking him in order to defend himself, it is punishable in some cases with death, and in all cases with, at least, the loss of limb.

"The Laws of the Colonies are said to be humane, but by those Laws a Child of five or six years old, may receive for a slight offence, or for no offence, at the caprice of the Master or Over-

seer, no less than thirty-nine lashes with what is termed a cart-whip. To this dreadful extent the Law *authorizes* the infliction of punishment by individuals. But even in cases where the Law conveys no authority,—where wanton cruelty is inflicted in defiance of the law, how easy must it be to escape detection, when the testimony of a Negro, or a thousand Negroes, would not avail against a White Man! And with what force must this argument strike, when we reflect on the proportion which the White bear to the Black Inhabitants of the Islands? What security could we expect in our passage even through the streets of London, if ninety-nine people out of an hundred, or even nine out of ten, were incompetent to give evidence in a Court of Justice?

"But, Sir, an Act it seems was passed in the Island of Dominica, in 1788, which was pretended to be made for the protection of the Wives of Negro Slaves. This Act is advanced as an argument against my view of the question, and as disproving the general oppression of the Blacks. But if any one will take the trouble to investigate the subject, he will find that this apparently humane provision is a mere mockery of Legislation, plainly intended to delude the People in this Country. From the papers on the table of this House, it appears, that there are no marriages among the Africans in the West Indies; that no religious ceremony of that nature is attended to;—and

that female Slaves, not being Wives in the eye of the Law, are consequently precluded from the protection of the Act!—Looking then at the Laws of the Islands, and reflecting on the cruelties to which these unhappy beings are exposed,—seeing them, like beasts of burden, urged on to work beneath the lash of their inhuman Drivers, who will venture to talk of the superior situation and happiness of the Slaves, in *our* Islands? No, Sir; they are not only the most wretched of all Slaves, but of all created Beings! —Far better would it be for them to be considered merely as brute animals, than to be treated as reasonable men, for the purpose only of being subjected to a dreadful responsibility for all their actions. In one Act passed by the government of Barbadoes, they are deemed and called *Brutish Slaves*, and are declared not worthy of the ordinary Tribunals; and yet when found guilty of the enormous crime of destroying any thing of the value of four-pence, they are subjected to the heaviest punishment.

"There is one set of complainants, however, who think it necessary to draw the particular attention of the House to their demands of compensation. I allude to the Owners of land in the Island of Trinidad; and such they contend is the nature of their claims, that until they are satisfied, there must be a stop put to this great and beneficent Act of the Legislature. That Island

was conquered in the month of February 1797, and at that time there were 10,009 Slaves upon it. From Sir William Young's Commonplace Book, it appears, that there have been imported, since that time, 4500 Negroes annually, which, in the course of nine years, amounts to 40,500. This, Sir, was wholly from the Coast of Africa;—but there were importations from the other Islands, which amounted to not less than 1000 Slaves yearly, which would make the number imported in that time about 50,000, and the whole number which ought to have remained in the Island, supposing no decrease to have taken place, about 60,000. But what is the fact? The total number of Slaves in that Island, according to the same respectable authority, Sir William Young, in the last year, was only 19,500, leaving the enormous deficit of upwards of 40,000 Slaves in nine years. These miserable creatures, let it be remembered, were not subjected to any pestilential disease. No: they were employed in the cultivation of new lands, and it is to continue this murderous cultivation, this dreadful and unparalleled waste of human life, that the Planters of Trinidad require you to suspend your present proceedings.

"We were told, Sir, that the passage from Africa on board the Slave-ships was happy, and that when the Negroes arrived in the West Indies, their situation was still happier.—We have

not, Sir, taken this wholly upon trust, but we have had the courage to search into the fact, and we have found, that all the crimes, all the iniquities which have been attributed to this Trade, are founded in truth!—And after we have torn away the shroud which before concealed this dreadful monster from our view,—after we have gazed upon its corruption, shall we still cling to it?—Shall we still increase the guilt of which we are now sensible?—Shall we still continue those practices which we know to be at war with every dictate of justice and humanity?—No, Sir; let us no longer be the objects of such a reproach. Let us reflect, that at the moment this discussion is going forward, the severest sufferings are endured in Africa;—let us consider the number of ships now sailing from its coast, and the miseries entailed upon the Wretches they are conveying to our Colonies. I hope that the time is not very distant, when the horrors we now witness will be endured no longer, and when our posterity shall have to compare these traditionary crimes, with the happier state of society before them;—when they shall behold Science penetrating into the yet dark and uncultivated deserts of Africa,—when Commerce shall be co-operating to soften the manners of its yet barbarous inhabitants,—and when the West Indies shall no more be cultivated, as now, by Wretched Slaves, but by happy and contented Labourers; by persons who are per-

mitted to enjoy the benefits of those Laws, and that Government, under which they live!—And will it not be a consolation to those who are to follow us, to think, that their forefathers were the first who put an end to this abominable Trade?—Many Honourable Members of this House may yet live to witness all these benefits, and to them is reserved, perhaps, the greatest happiness, which, in this state of existence, we are permitted to enjoy. What a delightful reflection is it to think, that generations yet unborn will bless our memories as the authors of their liberty and happiness!

"But, Sir, if such will be the feelings of those who have borne any part in this transaction, or who have even witnessed its completion, what then must be the feelings of my Honourable Friend? (Mr. Wilberforce.) What is there in the wide range of human ambition, which could afford pleasure so pure, —gratification so exalted, as he must enjoy?—When I look at the Man at the head of the French Monarchy, surrounded, as he is, with all the pomp of power and all the pride of victory, distributing kingdoms to his family, and principalities to his followers; seeming, as he sits upon his Throne, to have reached the summit of human ambition, and the pinnacle of earthly happiness;—and when I follow him into his closet, or to his bed, and contemplate the anguish with which his solitude must be tortured by the recollection of the blood he has spilt, and the oppressions he has committed; and

when I compare with these pangs of remorse the feelings which must accompany my Honourable Friend from this House to his home, after the vote of this night shall have accomplished the object of his humane and unceasing labours;—when he shall retire into the bosom of his delighted and happy family;—when he shall lay himself down upon his bed, reflecting on the innumerable voices that will be raised in every quarter of the World to bless his name; how much more enviable his lot, in the consciousness of having preserved so many millions of his fellow-creatures, than that of the man, with whom I have compared him, on a Throne to which he has waded through slaughter and oppression!—Who will not be proud to concur with my honoured Friend, in promoting the greatest act of national benefit, and securing to the Africans the greatest blessing which God has ever put it in the power of man to confer on his fellow-creatures?"

The House divided, when the numbers were—

For the Abolition - - -	283
Against it - - - - -	16
Majority - - - - -	267

CHANGE OF ADMINISTRATION.

April 9th, 1807.

On a discussion relative to the circumstances which had led to this event, Sir Samuel Romilly said, As it had never been his desire unnecessarily to revive religious animosities, he should leave it to the Noble Lord opposite (Castlereagh) to state to the House what had been promised to the Catholics, and to assign, if he was able to do so, his reasons for having abandoned them. The true question before the House was, whether it was constitutional, or rather, whether it was not a high crime and misdemeanor, for a Minister to subscribe a pledge, binding himself not to advise His Majesty on any given subject, whatever circumstances might arise, or whatever might be the situation of the country. He could not conceive any principle more pregnant with danger than that Ministers should bind themselves by such a pledge.

"When I reflect (continued Sir Samuel Romilly) on the doctrines which I have heard from the other side of the House, and the confident manner in which they have been advanced, I am almost led to doubt every opinion which I had previously entertained, and to suspect that all I have ever read, and all I have ever heard, of the pri-

vileges of a Member of Parliament, of the duties of a confidential adviser of the Crown, and of the principles of the Constitution, is to be renounced as visionary or out of date. I had certainly understood it to be a fundamental maxim of the Constitution, and one in which the security of the People and the honour and dignity of the Crown were alike involved, that *the King could do no wrong*; but if Ministry once consent to give a pledge like that which has been now required, they will from that moment cease to be the responsible servants of the Crown, and will shift the burden of responsibility from their own shoulders to those of their master. What would be the consequences of such a practice? What security would the nation possess against the traitorous machinations and intrigues of secret and irresponsible advisers? To whom could the people look for punishment and redress? To Ministers? No! *they* could not be answerable for advice which they had not given; for advice which they stood pledged to withhold. But this doctrine becomes more alarming when it is openly justified by a Minister of the Crown; when it is avowed, and by such an authority, that there exist cases, in which His Majesty has acted without any advice whatsoever!

"The Chancellor of the Exchequer has said, that the object of the present motion is to bring His Majesty to the bar of this House. For my own part, I know of no desire in any quarter to include

His Majesty in any censure for what has been done, nor has this motion any such tendency. On the contrary, its only tendency is to protect the Sovereign, and to uphold the maxim, that he can do no wrong; a maxim which must be utterly abandoned, if Ministers are to be allowed to enter into pledges for withholding their advice on any particular subject. There is certainly some novelty in the doctrine of the Right Hon. Gentleman who has taken upon himself to say, that there are acts in which His Majesty exercises his Prerogative without any advice whatsoever. Yet he appeared to speak with a tone of confidence on the occasion, when he told us that to the best of his knowledge the King had no adviser upon the point of requesting the pledge; that he does not believe he had any adviser, and that he does not think the country will believe that he had any adviser on the subject!—Now I had always understood that there could be no exercise of the Prerogative whatever in which the King had not some adviser; that even in calling particular persons to his Councils, he must have some adviser. Unquestionably His Majesty may call any man in the kingdom to his Councils. He may make a confidential adviser of a man whom the House has declared to be unworthy of all confidence, or whom it may have proclaimed guilty of the grossest violations of the Law! His Majesty may call into his Councils such a man, and the Law

says, that the King can do no wrong; but those who shall have advised him to take such a step, must be responsible to this House and to the Country. His Majesty may select for his confidential counsellor a person against whom certain Resolutions have been entered on the Journals of this House; a person who has been brought to trial, who has been acquitted, indeed,—but so acquitted, that not one of his numerous and powerful friends has yet ventured even to offer to the House a motion for rescinding those Resolutions from its Journals! His Majesty, I repeat, may call to his Councils such a man, who has indeed been acquitted by a *majority* of his Peers; but who cannot enter that House without beholding those (and they are fifty-two in number) who have condemned him, and reading in the circumstance of their averted looks the dreadful words of '*Guilty upon my honour!*'

"The choice of Ministers, then, is vested by the Constitution of these Realms in the King; he may call to his Councils whom he pleases, but the act must be done by advice, and the adviser be responsible to the Country. If it be once permitted to His Majesty's Servants to exempt themselves from giving advice upon any one subject, what is to preclude them from exercising the same discretion as to others? Where is the limit to be drawn? They may equally pledge themselves to silence upon the most important topics,—upon ques-

tions of peace or war, of commerce or finance, till they shall at length have left themselves no function to exercise, no duty to perform. It is of equal importance to the Sovereign and his people, that this doctrine of responsibility should be rigidly maintained. History every where displays the evils which have resulted from pursuing a contrary course. It is the ground on which the security of the Throne ultimately rests; and I should but idly display those feelings of respect which I have ever entertained for its just prerogatives, if I did not endeavour to prevent that ground from being weakened or destroyed.

"The Hon. Gentleman who has moved the previous question, is of opinion that the present Ministers have *not* entered into any pledge to withhold their advice from His Majesty on the subject of the Catholics. If, however, the late Ministry were dismissed because they refused to give this pledge (and it is not even insinuated that any objection, either personal or political, was entertained by His Majesty against them except in what related to this one subject), it remains to be explained how their successors have come into office without having any such promise exacted from them? They appear to me, at present, to be in this dilemma, that they are, either bound by some implied pledge, or have deceived His Majesty! Does this conduct correspond with the principles which were once professed by some of them? Is

it consistent with the former opinions of those men who resigned their situations, because measures, similar to the Bill which has been recently withdrawn, were not allowed to pass the Legislature? Others, amongst them, have indeed been uniformly hostile to such measures; but the means to which they have resorted in proof of their consistency, are not, on that account, the less reprehensible. Deprecating from my soul all animosities, and more especially religious animosities, it is with extreme regret that I have witnessed the attempts which have been made by my Right Hon. Friend (Mr. Perceval) to embitter the repose of the Country by reviving the cry of 'THE CHURCH IN DANGER!' I have long lived in habits of the strictest intimacy with him; I have had opportunities of knowing his numerous private virtues, and respect them as they deserve. Let me entreat him, then (and as a Friend), to reflect seriously on the course which he is pursuing, not amidst the splendid allurements of a Court, but in the hours of sober meditation, and when surrounded by his numerous pledges of conjugal affection; let him pause, ere it is too late, and consider the fatal and irreparable consequences which may result from a revival of religious animosities, to the people of this country, and amongst them, to those, perhaps, for whose future safety and happiness he is naturally most solicitous."

CRIMINAL LAW.

VIII. Eliz. c. 4.

May 18, 1808.

Sir Samuel Romilly brought forward a motion of which he had given notice, on the subject of the Criminal Law, and spoke to the following effect; "Mr. Speaker, in bringing forward a proposal for the amendment of the Criminal Law, I am fully sensible of the obstacles and difficulties to which I am exposed. I know, that, from a part of the public, at least, and more especially from that part of it, whose opinion may be supposed to have most influence on my conduct, instead of expecting praise, I must be satisfied with escaping censure. My apology, however, must be, that I have not taken up the matter suddenly or lightly; that the subject which I now presume to bring before the House, is one that has occupied my thoughts for many years. I long ago promised myself, that if ever I should have the honour of a seat in this House, I would bring forward some measures for reforming the Criminal Code; and recollecting this, I cannot but feel, that I ought rather to apologize for having delayed the proposal so long, than for bringing it forward now.

"I have always considered it a very great de-

fect in the Criminal Code of this Country, that Capital Punishments should be so frequent; that they have been appointed, I cannot say inflicted, for so many crimes. For no principle seems to me more clear than this, that it is the certainty, much more than the severity, of punishments, which renders them efficacious. This has been acknowledged, I believe, ever since the publication of the works of the Marquis Beccaria. The impression, however, which was made in this Country by his writings, has hitherto proved unavailing; for it has not produced a single alteration in our Criminal Law; although in many other states of Europe various amendments have taken place. Indeed, if we were to take the very reverse of the principle to which I have alluded, it would be a faithful description of the English law, in its enactments and administration. It is notorious how few of those, who are condemned, actually suffer punishment. From returns which are to be found in the Secretary of State's office, it appears, that in the year 1805, there were 350 persons who received sentence of death, of whom only 68 were executed, not quite a fifth part of the number. In the year 1806, 325 received sentence of death, of whom 57 were executed; and in 1807, the number was 343, of whom there were executed 63. If we deduct from this number all those who received sentence of death for crimes which are never, or very rarely pardoned, it will, perhaps,

be found, that out of 20 persons condemned to die, not more than one suffers death.

"The question, therefore, is, Whether the execution of the Law is to be the rule or the exception to be observed in the administration of justice; whether a code shall continue to exist in *theory*, which has been lately described (in language which one would rather have expected to hear from the lips of a Satirist, than from a seat of Judgment) 'as almost abrogated in *practice* by the astuteness of Judges, the humanity of Juries, and the mercy of the Crown.' I am far from being disposed either to censure or regret this relaxation of the Law; I am only inquiring whether Statutes so dispensed with can be deemed any longer essential to the well-being of the State.

"Such is the general view which I have taken of the subject. But my more immediate purpose is to call the attention of the House to one class only of these severe Statutes, which have, from a change of circumstances, acquired a rigour not originally intended by their framers; Statutes, in which the capital part of the charge depends, not on the mode or season in which the offence has been committed, but on the value of the property stolen; such as the Act of Elizabeth, which punishes with death the stealing privately from the person of another to the value of twelve pence; that of William and Mary, which makes privately stealing in a shop, to the amount of five shillings, a capital

Felony; and other Statutes of the same nature. So great an alteration has taken place in the value of money since those Statutes passed, that it is astonishing that the letter of the Law should have been suffered to remain unaltered to the present day, the offences, in the mean time, having become altogether so different. Perhaps there is no case which renders more striking the truth of Lord Bacon's observation, that *Time is the greatest of all innovators*; for, in proportion as every thing that contributes to the support, the comfort, and the luxuries of life has grown dearer, LIFE itself has become cheaper and of less account.

"There are many mischievous consequences, resulting from such a state of things, which do not strike the mind at first, but which become more evident, on reflection. Such Laws cannot be executed. Juries are placed in the painful situation of violating one of two duties; they are reduced to the alternative of violating their oaths, or what they are sometimes mistakenly induced to think more binding on them—the dictates of humanity. Often, against the plainest evidence, Juries have reduced the property stolen to less than half of its lowest value, in order to dispense with the capital part of the punishment. And this is now considered (as Blackstone has somewhere expressed it) 'A PIOUS PERJURY,'—words, which I regret, should ever have been put together; since nothing has a more immoral tendency than

for men to familiarize themselves with the disregard of their judicial oaths! The law ought not to remain so;—it causes offenders to be acquitted against the clearest evidence; and thus, by a necessary consequence, defeats its own ends, and becomes the abettor of its own violation.

"While there are thus two Laws, one upon the Statute Book, and another in practice, a total change has taken place in the nature of that which is considered as the most valuable prerogative of the Crown—the prerogative of shewing mercy. In exchange for this prerogative, the Crown has generally the painful duty imposed upon it, of selecting those upon whom the judgment of the Law shall be executed. This is the case in London and Middlesex. On the circuits, indeed, it devolves upon the different Judges of the Assize, and is felt by them to be the most painful of their duties. No rules are laid down to govern them in the discharge of it; but they are left to their own discretion, which must necessarily be as various as are their different habits and sentiments and modes of thinking. It may be the opinion of one Judge that punishments ought to be inflicted most strictly where crimes are most frequent; another, with the same anxiety for the discharge of his duty, thinks it more useful to be rigorous when crimes make their first appearance. One Judge is more influenced by humanity; another, by a sense of what is due to the safety of the community. And thus

their discretion is apt to be exercised under motives not only different, but frequently quite opposite.

"The question is, What shall be the remedy? Being sensible, that when a private individual takes upon himself to propose alterations in the Law,—it becomes him to proceed with caution, to do, at first, too little rather than too much, and to have the test of experience in favour of his first essays at improvement, before he proposes all which he would wish to have established;—being strongly impressed with this, I had at first intended only to move for the repeal of the Statutes to which I have been alluding, and to have substituted others almost in the same words, but with sums now equivalent to the value of what was originally fixed by the Legislature; and by making the Laws such as by their authors they were first meant to be, to repeal those Statutes which time and change of circumstances have imperceptibly substituted in their place. But when I found, that I should thus be enacting capital punishments for offences in which there are no circumstances of aggravation, I could not bring my mind to attempt it, and have, therefore, determined to propose the simple Repeal of all those Statutes. As, however, they will require different considerations, I have judged it most expedient to bring them one by one under the review of the House, and shall begin with the most objectionable, the

8th of Elizabeth, chap. iv. which has made stealing privately from the person a capital offence; declaring it, at the same time, to be my intention, and wishing it to be understood, that I shall, at proper times, propose a repeal of the others.

"The unnecessary severity of the 8th of Elizabeth, its absurdity and want of logic, make it a disgrace to the Statute Book. Reciting that the offence was *sometimes* committed under circumstances of aggravation, it therefore enacts, in *all* cases, and although there be *no* aggravation, that Clergy shall be taken away! In my time I have never heard but of one instance in which an offender convicted under this Statute, suffered death. It was a case upon the Northern Circuit, of a pickpocket, detected in Court, who was immediately tried and left for execution; and even if this solitary case had been omitted, it would have afforded us no just reason for regret. Under this Statute, from the strict construction which the Judges have observed of the word '*privily*,' that very violence, which, in other cases, would be an aggravation of the offence, is the means (if it be not such as to amount to robbery) of preserving the offender.

"There is also another subject, which, in my opinion, requires the interposition of the Legislature; it is to provide, in certain cases, a compensation for persons tried and acquitted, after having been long detained in prison. At present they

can have no compensation, except by an action for a malicious prosecution, even where the Judge is satisfied that there was no probable cause. They may have lain, eight months in gaol, for that is sometimes the interval between the Summer and the Lent Assizes, and in the four Northern Counties they may have been imprisoned above a year. Their families, in the mean time (who were dependent upon their daily wages for subsistence), have probably been consigned to the workhouse; and when they return home after an acquittal, which completely re-establishes their innocence, they find them either ruined in their health or corrupted in their morals. If, for the convenience or utility of the Public, private property is ever interfered with by the authority of Parliament, full compensation is carefully made to the owner; but what is the loss which is thus compensated to the opulent, compared with the injury suffered by the poor man in such cases as I have described? It will be said that such cases do not frequently happen; but they happen sometimes, and a remedy ought therefore to be provided against their occurrence. The difficulty is, that it is not every one acquitted who deserves compensation. Many escape, who are still notoriously guilty; acquittals from defects of form being unavoidable even under the best ordered laws. Another difficulty is, that if such a remedy be given in all cases, it may have a mischievous effect towards those very per-

sons, who are the objects of redress; because in some cases the evidence may be so nicely balanced, that if the Jury feel themselves reduced to the alternative of convicting or of giving a reward to the Prisoner by acquitting him, this very consideration may have the effect of determining them to convict. The discretion of saying in what cases compensation shall be given, can only be reposed either in the Jury, or in the Court; and I think, there can be no hesitation between the two. The Jury ought not to have their attention diverted from the single point of ascertaining the fact of guilty or not guilty.

"Fortunately there is already in our Statute Book an Act, which may serve us for a model, on this occasion. Until the year 1752, no compensation was made by law to prosecutors for their expenses and trouble in bringing offenders to justice. It therefore often happened, that the prosecution of the offender was a far greater evil to the person injured, than the loss of property which he had sustained by the offence. The 25th Geo. II. chap. 36, placed it in the power of the Court, upon consideration of the Prosecutor's circumstances, to grant him an order upon the Treasurer of the County for his expenses, together with a reasonable allowance for his time. I intend to make this Bill a model for the one which I shall now move for leave to bring in. I do not think it necessary, at this moment, to anticipate

objections to this compensation as being a new burden upon the County. Perhaps it may be thought that the same reason exists for granting a similar compensation in cases of misdemeanor; but I wish at present to confine it to felonies, following the principle of the Act of Geo. II.; and to give compensation to persons acquitted only in those cases where it is already allowed by Law, to the Prosecutor. The mode of deciding to whom it shall be given, whether to all indiscriminately, or only to such as the Court may consider deserving objects of compensation, will be open for discussion when the Bill is brought in."

Sir S. Romilly then moved, 1st, For leave to bring in a Bill to repeal so much of an Act made in the 8th year of Queen Elizabeth, as takes away the benefit of Clergy, from persons convicted of stealing privily from the person of another. 2dly, For leave to bring in a Bill to provide in certain cases compensation to persons tried and acquitted in a Criminal Court for the damages sustained by them in consequence of having been detained in custody and brought to trial.

Leave was given to bring in both Bills *.

* The Compensation Bill was subsequently withdrawn.

CRIMINAL LAW.

June 15, 1808.

Sir Samuel Romilly moved the Order of the Day for the House to resolve itself into a Committee on the Bill for abolishing the punishment of death for Privately Stealing from the person; and afterwards replied to the various objections which were urged against it.

He defended the Preamble of the Bill *, and thought that it ought to be retained. It shewed the grounds on which the Bill had been framed, and on which it was in his opinion deserving of support. But if Gentlemen thought differently, he would give up the present Preamble, and be content to substitute the common one in its place.

* The Preamble, as originally proposed by Sir Samuel Romilly, and objected to by Mr. Burton and Mr. Herbert (of Kerry), after reciting the Act of Elizabeth, was as follows;— "And whereas the extreme severity of Penal Laws hath not "been found effectual for the prevention of Crimes; but on the "contrary, by increasing the difficulty of convicting Offenders, "in some cases affords them impunity, and in most cases renders "their punishment extremely uncertain: And whereas the "Act hereinbefore recited, hath by the great diminution of "the value of money become much more severe than was origi- "nally intended; Be it, therefore, enacted," &c. &c.

He then proceeded to shew the necessity of a relaxation in our Criminal Code, and how its extreme rigour, by shocking the humanity of Prosecutors, of Witnesses, of Juries, and of Judges,—led them in many instances to compromise the Law and the Offence, rather than go to the extent of inflicting Capital Punishment where it was wholly disproportionate to the crime. The frequent impunity resulting from this state of things encouraged offenders to repeat their crimes; and if, after a multitude of escapes, some unfortunate wretch was at length destined to pay the prescribed penalty of his offences, the calamity was attributed to accident or want of dexterity, rather than to justice, and the vigour and vigilance of the Law. This was the opinion of the great Commentator on our Laws, who had enumerated no less than 160 Felonies without benefit of Clergy, to be found on the Statute Book in his day,—a number which since that period has been rapidly increasing. What a stain upon the Legislation of this Country! What a reflection upon the Criminal Codes of other nations, over which the Law of England had been extolled as being so superior! The Legislature, in tolerating such a state of Law, became an accomplice in the encouragement of crime. It was lamentable (he continued) to reflect, that whilst every attempt to mitigate the Law was received with so much jealousy and suspicion, no complaint had been ever heard against

its increasing rigour! A Bill had recently passed the Legislature, adding *nine* new Capital Felonies to the former long catalogue. Did any of those Gentlemen, now so tremblingly alive to the dangers of innovation, object to that Bill? And yet he would maintain, that to increase the severity of our Penal Code, was at least as great an innovation as a repeal of Capital Penalties to the same extent! On the score of innovation, the present measure was not to be compared, in magnitude, with the Indictment Bill, which had passed that House with so little comment or opposition.

Sir Samuel Romilly next adverted to the Committee appointed twenty years before, of which Mr. Fox was a Member, to inquire in what cases Capital Punishments ought to be abolished. They reported six Statutes. The Bill of Repeal passed the House of Commons, but was lost in the Lords by the prorogation of Parliament, though the first authorities in that House agreed that five out of the six of the Acts reported ought to be repealed. A remedy had been attempted for the extreme rigour of the Statute, which he (Sir S. Romilly) now sought to repeal, by explaining the value of money under the Statute of Elizabeth, according to the relative value of goods at that time and at present. But this remedy was not of a satisfactory kind. It was merely discretionary, and the exercise of that discretion was not always regulated by the best reasons. A case had occur-

red, in which a Judge of very respectable character directed the Jury to find a stolen key of the full capital value, because it appeared to have been stolen with a view to commit a farther theft.

After several other observations Sir Samuel Romilly concluded with expressing his anxious hope that the House would not only go into the Committee, but would ultimately pass the Bill.

The House then went into a Committee on the Bill.

CARNATIC—MARQUIS WELLESLEY.

June 17, 1808.

Sir Thomas Turton, after a few prefatory observations, moved two Resolutions,—the first simply stating the Imprisonment and Death of Ali Hussein;—the second committing the House to an inquiry into the circumstances. The first Resolution being read, the gallery was cleared, and a division took place;—Ayes, 11;—Noes, 34;—Majority 23. On the gallery being re-opened, Sir Samuel Romilly was found on his legs. "Although convinced (he was observing) of the culpability of the Marquis Wellesley, I do not impute to him corrupt motives or personal feelings. However mistaken in his views, he may have acted in

a manner which he conceived to be for the advantage of the East India Company and his Country. But the present Question refers not to his private motives, but to the policy and character of his public conduct;—whether he has not suffered himself to be misled by a false ambition for the aggrandizement of his Country, and whether he has not gratified that ambition at the expense of every principle of justice and humanity! What must be the effect of such conduct to the British character? It is said that the good of the Country has been promoted by this policy! The House will decide on this. The materials are before us; every paper has been produced; we are masters of the subject; and it is for us to determine, whether we shall or shall not make these actions our own, and sanction by our votes a policy which appears to me so very remote from wisdom and justice. This is a serious and important question; and for the honour of the British character I am grieved to witness such a division as that which has just taken place. We are told of wicked and malicious men who have been endeavouring by their writings to bring the Parliament of this Country into contempt; but let me seriously ask, whether all that such persons can do, whether any species of malice or abuse could have one thousandth part of the effect, which the bare knowledge of this circumstance is calculated to produce on the public mind? *(Hear! hear!)* This is not a sound for the moment; this is not a

transaction to be speedily forgotten. The papers now before us will be read and considered by future ages. It is not the character of the Governor General of India alone, it is the character of the British Nation, which will be recorded and commented on by the Historian. From his pen it will appear to future times, that after a long lapse of years the affairs of the Carnatic were brought before the British Parliament; that every paper and species of information were within their reach; that the subject had been frequently and amply discussed; nay, that such was the notoriety of the circumstances, that not a single Member could be excused for not being perfectly conversant with them. It will then be seen, that they wanted alike the virtue to condemn, or the manliness to adopt and applaud those measures; that involving, as the subject did, the national character in the nearest degree for policy, justice, and humanity, it was discussed in a House, containing less than fifty members, and was endeavoured to be got rid of by the previous question and other expedients equally unworthy of a British Parliament. *(Hear! hear!)*

"I will not now repeat what has been said on the subject of the subsisting treaties between the Nabob of the Carnatic and the East India Company, or debate the question whether he was originally a Sovereign Prince, or a Vassal of the Company. It is sufficient to say, that he had

been acknowledged as an independent and sovereign Prince in the treaty negotiated with him by the Company. Even after the pretended records of his treachery were discovered, he was not used as a Rebel who had thrown off his allegiance, but as an independent Prince required to enter into a new Treaty."—Here Sir S. Romilly went into a detail of the Papers found at Seringapatam, and read extracts of Letters from Marquis Wellesley to Lord Clive, on the occasion of an inquiry into the Charge against the Nabob, to shew that a resolution had been formed (whatever might be the result of that inquiry) to seize on the Civil and Military Government of the Carnatic. The Papers were not considered as sufficient evidence against the Nabob, or it would have been unnecessary to examine witnesses on the occasion; neither did the evidence of Ali Rhezzi prove that the Nabob was hostile to the English; on the contrary, it shewed that the most decided enmity subsisted between him and Tippoo. It was monstrous, therefore, to say that there was any thing in these proofs, as they were called, to affect the Nabob. The Hon. Gentleman then commented at length on the instruction given to the Commissioners who were appointed to examine Witnesses, and the attempts which were made to intimidate the latter, to give such evidence as should be agreeable to the Company, on whom they were wholly de-

pendent. To two of the Witnesses, who had been dependents of Tippoo Sultan, the Commissioners gave a written admonition, reminding them of the bounty of the British Government which they had received, and of its power to punish those who might be guilty of disobedience to its will,—and adding, that it was expected from those who were indebted to its bounty, that they should do their duty in all things connected with its interest!

"Such was the mode of proceeding (said Sir S. Romilly) with regard to these Witnesses, who were so completely under the power of the English Government, that they would have been held incompetent to give evidence at all in this Country. I rejoice to see my Learned Friend (the Solicitor General) taking notes of what I have said. Accustomed as he is to the justice of Britain, he will, without doubt, be prepared to shew that equal justice has been distributed in India.—This examination, either must have been judicial, in which case the accused person ought to have been heard in his defence, or it must have been taken for the purpose of publishing to the world a justification of the measures which were to be adopted in consequence of it. If the latter, it was more than ever incumbent on the Commissioners to be careful that no grounds of doubt should be permitted to remain.—But what is the fact? The examinations, though taken in the

Persic language, were put down in English, and the reason assigned has been, that, from the first question put to Ali Rhezzi, it was found that the examination would not take the turn expected. Thus, when every thing depended on the construction of an ambiguous sentence, and whether certain words were intended as compliments, or had some concealed and opposite meaning, the Commissioners, instead of writing down these words, chose rather to exercise their own discretion, and translate them into another language.

"But how did Witnesses, who were examined, inculpate the Nabob? The evidence of Ali Rhezzi proved nothing, and that of Gholaum Ali Khan was reported by the Commissioners to be full of contradictions. What, however, was the construction put on these examinations by Lord Wellesley? Adhering to his favourite hypothesis against the Nabob of the Carnatic, he assumed, *not* that the Prince was innocent, but that these witnesses were equally guilty! *(Hear! hear!)* It is true that there was no evidence to impeach the former, but then it was contended, that the latter were so deeply implicated in his atrocious conduct, that not even the assurance of forgiveness or promise of reward could induce them to disclose it! Sir, I will venture to say, that such a construction as this, is unrivalled in the annals of injustice. The judicial atrocities of the darkest times can scarcely exceed this fact. Although it

was known to the Witnesses that the more atrocious their discoveries, the more agreeable they would be to those on whom they depended; although the promises and threats held out in the instructions were before their eyes, they did not confirm a single suspicion entertained of the connexion between Omdut ul Omrah and Tippoo Sultan. There were other Witnesses examined; but because their testimony failed to establish any fact consonant to the wishes of the Governor General, no notice has been taken of the facts communicated by them.

"With regard to the Cypher, and the mysterious meaning supposed to lurk under certain expressions, the whole would have been a matter of ridicule, but for the fatal consequences which have ensued. The whole of the mystery consisted in giving descriptions instead of proper names, agreeable to the custom of the East; such as calling Tippoo, 'the Pillar of the Faith'—Wallajah, 'the Well-wisher of Mankind,'—the English, 'the New-comers,' &c. &c. In this way, Gibbon's History might be called a Cypher, when the *attributes* of persons were assigned them as names, when Virgil was styled 'the Poet,'—or Claudius, 'the Emperor.' Really, Sir, I must repeat it, that but for the melancholy consequences, which have resulted from these things, I should have deemed them subjects of ridicule, rather than of serious discussion.

"When the inquiry was first instituted, its pretended object was to guard aainst the power and treachery of Omdut ul Omrah. But why, after his death, did the same jealousy continue to be manifested towards his son,—towards a child, who could not be supposed to entertain any disaffection, and who possessed no power, against the British? To justify the measures which have been pursued, it ought to be proved, that the Son was a party to the designs of the Father (supposing, what has never been shewn, that the father did entertain designs traitorous and hostile to this Country). It is monstrous to maintain, as was laid down to the unfortunate Ali Hussein, that Omdut ul Omrah having acted as a public enemy, he, his child, by inheritance, succeeded to the treason of his father. But this curious and unfounded principle of National Law did not enter into the conception of the parties, until the occasion seemed to call on them for some such apology. Had Ali Hussein condescended to become '*the proper instrument*' of the Governor General, it would never have been heard of. No delicate hints would then have been circulated of his not being the son of Omdut ul Omrah; and Azeem ul Dowlah, now said to be the legal heir, would have been left to the poverty and obscurity from which he has been elevated to the Musnud.—The unfortunate Prince was dragged from the death-bed of his Father,

a scene to which the Mahometans attach peculiar solemnity. Twenty-four hours were then given him to determine on the acceptance of the terms proposed by the Company. Was this a treaty? No; it might be a cession or a surrender —but it is an abuse of language to call *that* a treaty, where one of the contracting parties was compelled to resign his independence, and indeed every thing he possessed. The Prince, young as he was, determined not to disgrace the memory of his Father. He rejected the proposal, and if there is a heart in this House not dead to the sentiments of humanity, it must feel in the acutest manner his noble conduct on this trying occasion. [Here Sir S. Romilly read the description of the young Prince's behaviour, as transmitted by Lord Clive.]

"The short interval between the deposal and death of Princes has become proverbial. In this case it was verified. I mean not to assert that violence was used. I only state the simple circumstance of his death having closely followed his dethronement!—The defenders of these measures say, that it is for the benefit of humanity,—for the happiness of the people of the Carnatic, that an European should be substituted for a native Government. Admitting, for the sake of argument, the truth of the assertion, still I would say, that such a revolution should be effected in an open and manly way, and not by descending to base

arts, false pretences, and a mockery of Justice. I trust that His Majesty's Ministers will now break silence, and give some explanation of an affair, which seems calculated, in my judgment, to strike every one who contemplates it with horror. Let the Statesmen amongst them endeavour to defend its policy; let my Learned Friend (the Solicitor General) shew that it is not a perversion of justice. How will they reconcile it to their consciences to give silent votes on what so deeply involves the character of that Empire of which they have been chosen the Directors? "For this is not a vote merely on the conduct of the Marquis Wellesley, but upon the honour of the British Nation. It is to declare whether the acts of the Government in India are consistent with British views and British justice;—it is to give a lesson and an example to all future Governors in that quarter of the globe;—it is either to tell them that this Country is determined to be just; or that she deems it more congenial to her newly-adopted character and policy to profit by the spoliation of her allies, and to sanction, by her apathy or approval, the violation of every principle of justice and humanity." *(Hear! hear! hear!)*

BANKRUPT LAWS.

Wednesday, March 1st, 1809.

Sir Samuel Romilly rose pursuant to notice, to move for leave to bring in a *Bill to alter and amend the Bankrupt Laws,* and spoke to the following effect. "It is now three years since I first brought this subject before the House. I then stated, what I now repeat, that, disclaiming all expectations of being able to render the system of our Bankrupt Laws perfect, I should obtain my object, if I only succeeded in rendering it less defective. I am aware there are many who still think that the system ought to be abolished alogether, and a new one substituted in its place. I will confess that I have not sufficient confidence in myself to undertake the Herculean labour; and that the most I can do, is to attempt the reform of some of its most glaring and mischievous defects.

"The first defect to which I would call the attention of the House, is, that a Trader, after having surrendered up all his effects to the use of his Creditors, is still suffered, in opposition to the first principle of the Bankrupt Laws, to continue liable for many engagements contracted before the period of his Bankruptcy. This is the case with all contingent engagements, when the contingency

happens after the Bankruptcy, such as surety debts; which, as they generally arise subsequently to the Commission, cannot, in such circumstances, be proved under it. The consequence is, that the Bankrupt remains liable for them, even after he has obtained his Certificate. The remedy which I mean to propose for this evil, is, that the Sureties may prove their debts under the Commission, provided they shall have paid them at any time before the final Dividend.

"The second defect under the existing Bankrupt Laws is, that the Assignees are in the habit of using the Bankrupt's effects for their own advantage, and of speculating with the property, as if it had been their own. The consequences, as I myself have witnessed, often are, that the Assignee becomes Bankrupt, and the Creditors have in the end to satisfy themselves from the scanty property which may chance to remain, after a Bankruptcy upon a Bankruptcy. A remedy for this was proposed some time ago in the House of Lords, and a Bill brought in to affix certain heavy penalties to the offence. The object, however, may, I think, be attained without so severe and troublesome an operation. Though the Creditors have the power of appointing a bank where the property shall be deposited, yet they frequently neglect to do so, and the whole is allowed to remain under the controul of the Assigness. This might be prevented by simply enacting, that if the Cre-

ditors neglected to appoint a bank for the purpose, the Commissioners should be bound to do it, and that if the Assignees afterwards retained any part of the property in their hands, it should be imperative upon the Commissioners to charge 20 per cent. on the money so retained. This, I think, will be sufficient to prevent the abuse, or at least will go a much greater way towards that desirable object than any severer penalties.

"The third defect in the system is, the expense and uncertainty attending the proceedings under Commissions of Bankruptcy. In actions by the Assignees to recover debts due to the Estate, it is incumbent on them to prove *the Trading,—the act of Bankruptcy,—and the petitioning Creditor's debt;* and in many instances the Debtors of Bankrupts are induced to withhold the payment of what they justly owe, in the hope, that the Assignees may fail in the establishment of one or other of these circumstances. The remedy which I would here propose, is, that in all such actions the production of the Commission, and the proceedings, shall be evidence of the facts above alluded to, unless the opposite party shall have previously given notice of an intention to contest them, and to dispute the validity of the Commission.

"I would also recommend, instead of the present expensive proceedings to which the Assignees are exposed for the non-payment of the

Dividends when once declared, a more summary mode of relief to the Claimant by petition to the Chancellor.

"The next amendment which I shall submit to the House is, of all the others, that of the greatest importance. It is to take from the Creditors the power which they now possess (without any controul, and without the obligation even to assign a reason for their conduct) of refusing, at their own pleasure, a Certificate to the Bankrupt. Let the House consider the situation of an uncertificated Bankrupt. It is, in any point of view, most deplorable. Without the means of acquiring property; for whatever he gains may be instantly seized upon by the Assignees; his industry is lost to his family and to his country; and though he has surrendered upon oath his last shilling, he is still liable for debts due before the Bankruptcy, and may be imprisoned for life in consequence of engagements which he has not the possibility to discharge. By a Statute passed in the early part of the reign of George II. this power was given to the Chancellor; but by a subsequent Statute of the same reign, it was enacted, that a Bankrupt should not receive his Certificate, without the consent of four fifths, in number and value, of his Creditors; so that, however honourable and just in a moral point of view, the Bankrupt's conduct may have been; however inevitable his misfortunes, he is to labour under all the evils described, unless perchance relieved by the favour of

his relenting Creditors. And with whom does this power of relief in general rest? Frequently with a small number of the Creditors; sometimes with a single one, whose debt may happen to bear a large proportion to those of the other Claimants. Hence, cases have occurred in which the will of one individual has prevented the Bankrupt from obtaining his Certificate. But this is not the only hardship to which the Bankrupt is exposed by the Statute just alluded to. Although unable to prove under the Commission, or to receive a Dividend, yet any Creditor may join in withholding the Certificate, and may subsequently imprison the Bankrupt for life.

"I am aware that this part of the subject involves another, and a most serious consideration, the policy of imprisonment for debt. Though far from being disposed to enter upon the question at the present moment, I cannot help incidentally observing, that, in my opinion, an individual could scarcely render a greater service to his country, than by procuring the abolition of such a punishment altogether. It is mischievous to the individual; it is pernicious to the public; and though the imprisonment may, in many cases, be just, yet it is certain, that in many others it is equally unjust. But with respect to an uncertificated Bankrupt, it is *always* unjust; for the only object of the punishment is to compel him to do that which the Law supposes impossible,—which

it has indeed rendered it impossible for him to perform, without hazarding the penalties of a capital felony. The punishment, therefore, in *this* case *must* be unjust. But consider only the circumstances under which it is inflicted, the relative situation of the parties concerned, and the consequences which must frequently result from such a state of things. Think of an individual invested with judicial power in his own cause, and over one, who may, who must have offended him, by defeating, however innocently or reluctantly, his legal claims. What must be the condition of the unfortunate Bankrupt so situated, exposed without defence to the discretion of his irritated Creditor and Judge, destitute alike of all remedy or hopes of relief, except from the mercy of an enraged enemy? How frequently has this power been rendered subservient to the gratification of the basest and most malignant passions! How frequently has the revenge of an envious competitor been satiated by the imprisonment of his victim for life! Indeed it is scarcely possible to appreciate the extent of misery and evil which such a state of things is calculated to produce.

"Paradoxical as it may appear, it is not less true, that Certificates are more frequently withheld from the candid and honest, than from the fraudulent Bankrupt. They are often withheld by some one or two rapacious Creditors for the purpose of extorting money from the Friends,

perhaps from a Son, a Brother, or a Father of the Bankrupt, and of thus securing to themselves an undue advantage over the other claimants. What a temptation to fraud does this hold out to the Bankrupt,—a temptation which though far from justifying his weakness or want of moral principle, nevertheless ought not to be thrown in his way! I speak not from conjecture, but from experience. It has not unfrequently induced the Bankrupt to withhold a part of his property from his honest Creditors as a bribe for the favour of some less conscientious and merciful Claimant; or if thwarted in that object, and betrayed into a full disclosure of his effects, it at least deters him from giving that assistance to the Commissioners in investigating the validity of his debts, which, under other circumstances, it would be as much his interest as his inclination to offer. In a case which has recently occurred in the Court of Chancery, it appeared that a Creditor had refused to sign a Certificate, because the Bankrupt had suggested, what turned out to be the fact, that he was endeavouring to prove a larger debt than was really due. Another evil is, that until a Bankrupt has obtained his Certificate, he cannot be a witness in any thing relating to the Estate. Here is a further impediment in the way of the Certificate; for it often happens, that a Creditor, on whose discretion the allowance of it may depend, is involved in some contest respecting the Bankrupt's effects, and is

interested in excluding his testimony. The Certificate is consequently withheld, to the serious detriment of the Bankrupt, and, perhaps, still more to the defeat of justice, which might have rested on his evidence. Such are the consequences of a law which makes a man the judge and executor in his own cause!

"The House will perhaps hear with surprise, that for some years past, there have been more Cases in which Certificates have been withheld than granted. From a calculation which I have been enabled to make on the subject, it appears that in the year 1805 there were 940 Commissions issued in England, under which only 405 Certificates have been granted; that in 1806 there were 1084 Commissions, and only 383 Certificates; and that during the last twenty years, under 16,202 Commissions of Bankruptcy which have been taken out, there are only 6597 cases, where the Certificates have been allowed. It may be asked whether no remedy has been ever suggested for an evil of such magnitude? Temporary, and therefore insufficient remedies have been from time to time applied. In 1772, a Clause was introduced into the Insolvent Act, to compel Creditors to give Certificates where there had been nothing fraudulent in the conduct of the Bankrupt. In 1778, a similar Enactment passed the Legislature. But the relief was confined to cases which had happened previously to those periods. These are the

only two instances which have occurred in this country, and they proceeded on a principle to me altogether incomprehensible. If it was unjust in 1772, or 1778, that a Bankrupt should remain at the mercy of his Creditors, it is equally so now, and at every other time. The remedy, therefore, ought not to be temporary, but permanent. In Ireland, these temporary expedients have been more frequent than in this country. Measures similar to those adopted here, received the sanction of the Irish Parliament in 1786, in 1797, in 1799, and in 1800; so that had it not been for the Union, this remedy was in a fair way of becoming the subject of an annual Law. But since the Union, no such temporary Act has been passed; and the distress that must have been produced by this suspension of a remedy (the nature of which at least proves the necessity of some legislative measure) may be more easily imagined than described. The remedy I would suggest, is, not to take the power altogether out of the hands of the Creditors; but to enable the Bankrupt, where his Certificate has been withheld for the space of two years, to petition the Chancellor to allow it, who, after hearing the Creditors, shall decide upon the merits, and allow or withhold the Certificate, as the justice of the case may require. The only objection to this remedy, as far as I can judge, is, the additional expense which it might occasion in these proceedings; to obviate which, I would propose, that the addi-

tional Process should be exempt from the Stamp Duty. Indeed, all Taxes on Law Proceedings are highly objectionable. With the sole exception of Lotteries, no mode of increasing the Revenue is so injurious to the interests of the people. I know that this is not a popular sentiment, but it is only so, because the subject has not been duly considered. But if there is any case in which the obtaining of justice should be rendered as easy and little expensive as possible, it ought to be that where the individual concerned is struggling as well for his liberty, as for the honest means of rendering his industry available to himself and to all around him. This is the only part of the Bill which I intend should have a retrospective operation. I shall propose that all uncertificated Bankrupts, who have passed the examination two years, shall be entitled to the benefits of the measure.

"It may be asked, however, why, when a Law is thus proposed for the protection of the honest Bankrupt, something is not also done to protect the Creditor against the dishonest Bankrupt, and to avert the increasing evil of fraudulent Bankruptcies? To this I can only answer, that my parliamentary experience has taught me to be apprehensive, that I have nothing to suggest on the subject to which the House would be disposed to accede. The only remedy I can devise is, *to render the Law more efficacious, by making it less se-*

vere! The frequency of fraudulent Bankruptcies may be traced to the unrelenting rigour of the Penalty which the Law has attached to the offence. I have already stated that there have been upwards of 16,000 Commissions taken out in twenty years, and that instances are continually occurring of Bankrupts fraudulently withholding their property; and yet from the year 1732, when the punishment of death was first decreed for the offence, only three Prosecutions have been instituted. In one of them, which happened in 1759, and in one only, a person has been convicted and executed. In another, which occurred since (the case of Bullock), the Bankrupt was convicted, but on grounds so improper, that His Majesty was graciously pleased to make him the subject of his Royal Mercy. Can any stronger evidence be adduced of the inefficacy of sanguinary Laws? And really, when the moral guilt of the case is considered, it is not wonderful, that there should be such frequent evasions of the Law, and so much reluctance on the part of the Creditor to resort to its extreme remedies. Undoubtedly, the Bankrupt, who fraudulently withholds his effects, incurs a great moral responsibility. Yet it must be recollected, that he is not a voluntary agent, spontaneously coming forward to compromise with his Creditors. Every thing is taken from him by force. He is under strong temptations, too, in the apprehension of dis-

tress and misery to his family and himself. But however bad the opinion we may entertain of his conduct, is it more criminal than that of the man of high rank, who avails himself of that rank, to evade the just claims of his Creditors? Or is there to be found that wide distinction between their cases, that whilst the one can with impunity withhold, and dissipate that property, which might have liquidated all his honest debts, in administering to his own selfish gratifications, the other should be consigned to the horrors of an ignominious death? If the Law relating to dishonest Bankrupts had been less severe, it would have been more frequently enforced, and would have contributed much more effectually to the attainment of the desired end*.

* The justice of Sir Samuel Romilly's sentiments on this subject begins to be generally recognised. In a Report on the Bankrupt Laws made by a Committee of the House of Commons in May 1818, it is stated, that, "the Law by which Capital Punishment is ordered to be inflicted upon fraudulent Bankrupts, and upon those who do not surrender, is so severe and so repugnant to the common sentiments of mankind, that it becomes totally inefficient in its operation; and hence the most flagitious individuals escape with impunity." *Page* 7. And again, after repeating that the severity of the Law against Bankrupts has a tendency to defeat the object of the Legislature, the Committee recommends, that so much of the fifth of Geo. II. c. 30, as subjects offenders "to suffer as felons, without benefit of clergy, should be repealed; and that, in lieu thereof, the punishment of transportation for life, or for any period not less than fourteen years, should be enacted." *Page* 19.

"Having thus stated, as briefly and clearly as I am able, the objects which it is my wish to effect, and feeling that the proposed measure is one of a very important nature, I would by no means precipitate the consideration of it. If I may be permitted to bring in the Bill, and have it once read, I will then move (after having it printed) to defer the second reading to a distant day. Yet I should be unwilling to make it a very distant day, or that the postponement should exceed a month. I shall be sorry if the Bill does not pass early enough to enable persons to avail themselves of its provisions before the ensuing long vacation. Every day's delay is the cause of imprisonment and misery to a great number of individuals. Had such a Bill been passed at the beginning of the present reign, how much misery might have been averted! What an increase of industry might it not have produced! How many individuals might have risen to wealth, and have probably devoted that wealth to purposes of national advantage, who have been compelled to drag out life in hopeless penury! How many hearts now broken down with sorrow, might have beat high with exultation at having rejoined the station in society which they once adorned, and at having been enabled to fulfil with honour those engagements, which, though interrupted by misfortune, had been rendered impracticable only by subsequent persecution! *(Hear! hear!)*

"There are some other objects of minor importance which I have in view, but upon which it is at present unnecessary to dwell, such as to prevent the vexatious consequences that often arise from secret acts of Bankruptcy; to provide that Bankrupts may be competent witnesses without releasing the sums to which they might be entitled in case their property came to a certain amount*; and to introduce some alteration with respect to legal executions in cases of Bankruptcy."

Sir Samuel Romilly then concluded by moving for leave to bring in a Bill to alter and amend the Laws relating to Bankrupts. The motion was agreed to.

CONDUCT OF THE DUKE OF YORK.

March 13, 1809.

Sir Samuel Romilly spoke in substance as follows. "Mr. Speaker, viewing as I do, the case before the House in a far different light from that in

* It is to be lamented that Sir Samuel Romilly was prevented from pressing this Clause.

which it appears to every other Member of my profession who has preceded me in the debate, I cannot satisfy myself with giving a silent vote on so important an occasion. At the same time it is far from my intention either to follow my Right Hon. and Learned Friend through all the topics which he has thought fit to introduce, or to enter into, and comment in detail, upon every branch of the evidence now before the House. The powerful observations which have been already made upon the subject, render the task unnecessary; and I shall, therefore, confine myself to those circumstances which have had the most weight in determining my own opinion. I mean those strong and undeniable statements upon which, after comparing with peculiar strictness one case with the other,—after exercising my most mature judgment, I am compelled to the necessity of declaring it impossible for me to assent to the proposition of my Right Hon. Friend the Chancellor of the Exchequer. That proposition calls upon the House to declare, what, in my conscience, I cannot assent to, that there exists no ground for imputing to His Royal Highness, either corruption, or connivance at corruption, in the disgraceful transactions which this Inquiry has disclosed. But before I enter on the merits of the case before us, I would point out the state in which it is now presented to our consideration.

"Sir, the Hon. Member (Mr. Wardle), who

instituted these proceedings, has proposed an Address to the Throne, which, after stating the existence of various corrupt practices in the disposal of Commissions, and the knowledge of such practices by the Commander-in-chief, concludes with a prayer for the removal of His Royal Highness from the command of the Army. To this has succeeded the amendment of my Right Hon. Friend (the Chancellor of the Exchequer) to which I have before alluded, and which substitutes two Resolutions for the Address; the first, calling on the House to decide on the guilt or innocence of the Duke of York; and the second, affirming, that there is no ground for charging His Royal Highness either with personal corruption or any connivance at the corrupt practices which have been disclosed. Then follows the Amendment of another Hon. Gentleman (Mr. Bankes) differing in its grounds, but tending to the same effect as the original Address. Such is the state of the Question before us; and after all the consideration which it has been in my power to bestow upon it, I shall vote for the original Proposition of the Hon. Mover, and for negativing the different Amendments.

"It is with some astonishment I have heard it argued by my Right Hon. Friend the Chancellor of the Exchequer, that the House is called on to pronounce its verdict on the guilt or innocence of His Royal Highness; that it is imperative upon

us to give an Aye or a No on that point; that no other course of conduct is open to us; and that, in not pursuing it, we shall deviate from that strict line of duty, which is becoming both our own character, and the claims of the Illustrious Personage accused. Surely there must be some mistake in the course which my Right Hon. Friend has recommended. He must be aware, that there never has been, there never can be a question, with respect to the Right and Power of this House to address the Throne upon the propriety of removing from a public Station a public Servant! *(Hear! hear! hear!)* Equally untenable are the arguments, that this House ought not to come to such a decision unless upon complete Evidence, that is, Evidence complete in a legal interpretation, and received under those sanctions which are required in Courts of Justice. I believe that in the history of Parliament, no such limitation has been set to the power of this House. Sir, we are not restricted from inquiry by any such considerations; nor can I conceive a case in which we should be able to interfere with the conduct of a public Servant, if we are precluded from addressing the Throne for the removal of the Duke of York on the Evidence which is now before us. *(Hear! hear!)* We are not, according to the principles of the Roman and Scottish Law, compelled to the decision of Guilty or Not Guilty, Proven or Not Proven. Indeed, if ever there was

a case where this House was incapacitated from exercising such a judgment, it is the present. No such Question has been submitted to its decision. No choice has been given it. The Amendment of my Right Hon. Friend allows us the opportunity only of pronouncing that His Royal Highness is *Not* Guilty. But my Right Hon. Friend has laid great stress upon the charges which he says were preferred by the Hon. Mover (Mr. Wardle), and which, he contends, ought to be met with a direct denial or admission by this House. I deny, that this House has any definite knowledge of such charges. In Criminal Proceedings, where a defined Accusation is preferred before our ordinary Tribunals, such accusations are reduced to writing, both for the purpose of enabling the Accused to answer, and the Judges to decide. Have we any such document here? We have not. It is true, that very serious facts, highly prejudicial to the public interests, have been unfolded to us; it is true, that we have thought it necessary to investigate the conduct of His Royal Highness the Duke of York, in his *responsible* character of Commander-in-chief; but still this is not a Tribunal at the bar of which his guilt or innocence is to be decided. *(Hear! hear!)* Upon this subject, the arguments of the Noble Lord under the gallery (Folkstone) are unanswerable. If this House is to try the question of guilt or innocence, where is the record? Indeed, it is only in the

proposed Resolutions of the Chancellor of the Exchequer, that posterity, in recurring to the history of these times, will be able to find any such imputations as "*personal corruption*," or "*criminal connivance*," against His Royal Highness.

"But what says the Letter of the Party accused? Does it not, in the strongest terms, deprecate any attempt, on the part of this House, to pronounce a decision upon his case? Does it not call upon us to refer the matter to a more competent Tribunal? *(Hear! hear! hear!)* In that unfortunate letter, which could only proceed from the very worst advisers; in that unfortunate letter, which, from my soul, I wish could be expunged from the Journals of this House, and from the memory of the Country, His Royal Highness has entreated us to avoid that very course of proceeding which his Advocates in this House now propose for our adoption. *(Hear! hear!)* 'My consciousness of innocence (says His Royal Highness in that part of the Letter to which I have alluded), my consciousness of innocence leads me confidently to hope, that the House of Commons will not, upon such evidence as they have heard, adopt any proceedings prejudicial to my honour and character; but if, upon such testimony as has been adduced against me, the House of Commons can think my innocence questionable, I claim of their justice, that I shall not be condemned without trial, nor be deprived of the benefit and protection which is

afforded to every British Subject by those sanctions under which alone Evidence is received in the ordinary administration of the Law.' *(Hear! hear! hear!)* Do the Hon. Gentlemen mean to insinuate by their cheering, that His Royal Highness does not deprecate a decision? A decision must mean a determination or declaration of Guilty or Not Guilty. But the only alternative afforded to this House is the alternative of acquittal!

"Leaving to the Tribunal most competent for the purpose, the right of passing its own judgment; I still cannot hesitate to say, that, from the Evidence which this House has examined, sufficient grounds appear for supporting the original Address. To me it seems impossible that His Royal Highness could have been ignorant of the disgraceful transactions which have been disclosed. I will not adopt the term "*criminal connivance;*" indeed, I cannot see the necessity of its introduction, unless for the direct purpose of preventing some three or four Members from voting for the original Proposition. That Proposition, after the most mature deliberation, I feel the necessity, of supporting. Painful as it is, there is no consideration shall make me shrink from the duty. The House will excuse me whilst I offer a few observations on those parts of the Evidence by which I have been induced to form my opinion. In the first place, notwithstanding all that has

been said and done to shake the confidence of the House in the truth of her statements, I do not disbelieve the Evidence of Mrs. Clarke. When first she appeared in that box, the general impression was, that she was telling a baseless story. In every quarter the strongest doubts were entertained of her credibility. She was represented as actuated only by hostile and vindictive feelings against the accused, and every probability was in opposition to her statements. Her confidence, however, proceeded, and its progress compelled the attention of the House. Without affecting to say, that she is a witness who ought to be believed in every individual statement, I still think, that in the main, she is entitled to credit. In many of her statements, too, she has been corroborated by other witnesses. *(Hear! hear!)*

"An Hon. and Learned Friend of mine (the Attorney General) seemed to think, that in forming any estimate of Mrs. Clarke's veracity, the House should always bear in mind that she was an accomplice in the criminality which she unfolded. But to what extent did this attempt at the impeachment of her credit go? Only to this; that, Mrs. Clarke seeing that His Royal Highness had no objection to the exercise of her influence, took money from those whom she served for the exertion of that influence. This is the extent of her co-operation; this is the sum of her immorality in these transactions; and yet it is upon this species of

immorality, that the Learned Attorney General has endeavoured to impress upon this House, that she is not a Witness to be credited at your Bar, and that the testimony, which she has delivered, is false. *(Hear! hear!)* I do, in my conscience, believe, that in this country there are many men capable of this species of immorality,—of this very offence, for the commission of which it is attempted to attach discredit to Mrs. Clarke,—who would endure the extremity of human suffering before they could be brought by any pretence to commit the heinous crime of giving false testimony.

"But even was the criminality of Mrs. Clarke of a more aggravated character, was she, in the most disreputable acceptation of the term, an accomplice, will it be contended, that she would be incapacitated from giving evidence, or that this House, or any Court of Justice, would be authorized in refusing her testimony? Even in capital cases, the evidence of accomplices is admissible. It is a species of evidence, indeed, which should be rarely resorted to, and which should always be received with the utmost jealousy and caution; still it is clearly admissible, and, if believed by the Jury, is sufficient in Law to warrant a conviction. The case which has been cited on this subject by the Noble Lord under the gallery (Folkstone) is directly in point. There, the parties had been convicted upon the single testimony

of an accomplice; yet the verdict, on reference to the Judges, was declared to be legal. In the subsequent case of the King against Durham, a similar question was brought before the Court, and received a similar determination *. Indeed, it is only in cases where accomplices in Felony, have themselves been found guilty and received judgment, that their testimony in any legal point of view is considered as inadmissible. Now, Mrs. Clarke is not under any such imputation; and though her evidence may not be entitled to that degree of confidence which Witnesses, less influenced by prejudice or passion, might deserve, she is neither an incompetent Witness, nor to be lightly discredited. As to the contradictions which have appeared in some parts of her evidence, and which have been so much dwelt upon, such as that relative to the 200*l.* note, and one or two others; I cannot but consider them of a nature wholly immaterial to the facts with which the Duke of York is charged. I certainly admit, that in a Court of Justice where a Witness is examined under a solemn and serious obligation, upon the sacred observance of which, he pledges his hopes of salvation; the most immaterial contradiction is conclusive against his character for veracity;

* Atwood's Case, 2 Leach, Cr. Ca. 521. Durham's Case, ibid. 538.

but no such consequence can be presumed, where a Witness makes immaterial contradictions, under the terror of no such obligation, and altogether unrestrained by the consequences which would follow the violation. Thus, though it is impossible to deny that the evidence of Mrs. Clarke has been in many respects most exceptionable, still the House must feel that it was on points in which she could have no interest in the contradiction, and which do not at all affect the main object of the Investigation. This opinion I have formed from an attentive observation of her conduct at the Bar—conduct which, in my mind (notwithstanding the fascinations of which we have heard so much), excited no other feeling than disgust.

"In the course of my professional career, it has been my painful lot to see too frequent examples of deliberate perjury; but in such cases I have uniformly observed, that the persons who came prepared to forswear, came also prepared to evade examination, and to guard against the consequences. But what demeanour did this Witness exhibit? Directly the reverse. She appeared in all the pride of levity. Her manner was unstudied; her replies were open and unpremeditated. She received your interrogatories with a marked inattention; she smiled at your cross-examinations; she answered with repartee, and she withstood all the endeavours which were so successively made to waylay and mislead her from the

truth, if truth had not been the foundation of her statements. *(Hear! hear!)* I repeat, that however light, however unbecoming in many respects, her demeanour at the Bar, her testimony was that of one conscious that the basis on which she depended, would fully support her! But whilst the carelessness of her manner evinced the sincerity of her evidence, the knowledge of the punishment which would await her if she prevaricated, a visitation of which she was sometimes reminded, operated to impress upon her mind the necessity of adherence to the truth. I believe there were other Witnesses examined, who came under a far different impression. *(Hear! hear!)* The difference of manner between Mrs. Clarke and Messrs. Donovan and Sandon was striking. The obvious intention of the latter was to give such evidence as might be most beneficial to their own interests; and the consequence was, that they started not at falsehood, but actually set truth at defiance.

"These are the general observations with which I feel it my duty to preface the few remarks which I intend to offer on the evidence itself. I have made them in order to show, that whatever may be the objections to Mrs. Clarke's testimony, they are not, in my opinion, of sufficient weight to destroy our confidence in it entirely, even if it had been unsupported by other evidence. In the whole course of my practice or of my reading

I have seldom met with a case standing upon stronger foundations. A woman appears at your Bar, to tell a very incredible story. She makes her disclosure with a courage and a confidence which truth only could justify. She speaks of large bundles of Letters, which, as well as others (of the existence of which she appears to have been wholly ignorant), are found and produced. She evinces no anxiety at the sight of them. These Letters are minutely examined; witnesses for the avowed purpose of rebutting her Evidence are produced at your Bar. What is the result of all these operations? Is it refutation? Is it contradiction? No such thing. Every Witness, every document, all go not only to bear out her Evidence, not only to corroborate every particular of her statements as referring to the Inquiry, but carry conviction to an extent far beyond that which her testimony originally unfolded; *(Hear! hear! hear!)* and unless we shut our eyes to truth and facts, it is impossible but this unexpected confirmation of her statements must make a considerable impression. For my part I cannot bring myself to reject her Evidence, even upon points not corroborated by other circumstances.

"When first my attention was directed to some parts of the conduct imputed to the Commander in Chief, I hesitated long before I could give credit to them. It does, however, now appear to me, from what we have learned on other points,

not immediately connected with military transactions, that there are very strong grounds for believing them. It is with regret that I am compelled to mention them. They have, indeed, been already submitted to this House by the Noble Lord (Folkstone) under the gallery, with that degree of talent which all must admire, particularly when united to that pure and unadulterated honesty which so strongly marks the public life of that distinguished Nobleman. *(Hear! hear! hear!)* In the case of Kennett to which I allude; we find Colonel Taylor advising Kennett to obtain a recommendation from Sir Horace Mann. And with that occurrence in our view, when we hear such stress laid upon the regularity of the recommendations which were made in favour of the different Officers, whose promotion was obtained by the influence of Mrs. Clarke, is it not reasonable to presume that such recommendations were procured for the express purpose of covering and concealing the real and successful operations?

"The case of Miss Taylor has already engaged a considerable share of the time and ingenuity of my Learned Friends, who have preceded me in this discussion. For my part, from the character, demeanour, and evidence of that young woman, I rely fully upon her credit. Her having kept a Boarding School, has produced much comment; but allow me to say, that the very fact of her having children committed to

her care and protection, is no slight evidence of the purity of her life and character. *(Hear! hear!)* And from what has happened to that unfortunate young woman, since she was examined at this Bar, which the Noble Lord, with so much feeling, communicated to this House, on a former evening, namely, the loss of all her scholars; we must conclude, that the persons, who since this inquiry have withdrawn their children from her care, were persons not inattentive to the precepts and principles of morality, and that they were persons upon whose good opinion of Miss Taylor, this House must rely, in estimating the general tenour of her life. I will ask what interest could that Witness have in giving the testimony she has given, if it were untrue? Can you suppose that she was actuated either by hostility or resentment against the accused? To imagine that her inducement arose from a connexion by marriage with Mrs. Clarke, is an idle assumption. And what interest could she have in appearing against so powerful and exalted a personage as the Duke of York? But perhaps we shall be told that she was brought here by the influence of money; that is, that she was a bribed and suborned Witness. Would a Court of Justice act upon such an assumption? or will this House, in investigating the conduct of the son of a King, presume an inference, which, on the trial of any other person, in our subordinate tribunals, would

not for a single moment be listened to?—Then what says Miss Taylor's Evidence? She states, that the Duke of York inquired of Mrs. Clarke how Colonel French behaved to her. I call upon every man who hears me, solemnly to ask himself—for what honest purpose could His Royal Highness have made this inquiry? *(Hear! hear! hear!)* How could he know that Mrs. Clarke had any connexion with Colonel French? If she had made any communications on the subject of his Levy, was it not the duty of His Royal Highness directly to stop her,—to shut the door at once to her applications? But when we find that he asked, how French behaved to her, what construction can you put upon these terms? What inference can you deduce from them? I protest to my God, that in every consideration I have given to these expressions, I can entertain no other construction, I can arrive at no other conclusion, but that, in using these expressions, His Royal Highness meant directly—Is French liberal to you? Does he supply your pecuniary wants? *(Hear! hear!)*

"The next point that presents itself to my view is the mysterious Letter respecting Tonyn, which I most certainly do assume to be the Letter of the Duke of York. If that is not established in evidence, I know not what fact either is or ever was. Did the life of a fellow-creature even depend upon the avowal, I could not hesitate in asserting

that Letter to be the hand-writing of His Royal Highness. Nay, if the Duke of York could himself see it, I am confident he would acknowledge it to be his own hand. But what is the opinion of Gentlemen best acquainted with the hand-writing of His Royal Highness? What is the opinion of those Witnesses who, from their long experience in the distinction of hands, are supposed to be particularly versed in the subject? The former (with the exception of General Brownrigg, who went no farther than to say, that *he could not swear* that it was His Royal Highness's hand-writing) have expressed their belief that it is his writing. *(Hear! hear!)* The latter, on comparing the different Letters that have been submitted to their inspection, are for the most part, of opinion, that they are written by the same person. But here let me entreat of the House to reflect upon what it has done, upon the very dangerous precedent which it has introduced. What might be the consequence of the principle, if it was generally allowed to be acted on? What a field for the operation of fraud would it not lay open? A man, who wishes to disprove his own hand-writing, has only to select some other paper which does not exhibit a fair specimen of its general character, and to call Witnesses to prove the difference, in order to vacate the most solemn instruments. *(Hear! hear!)* Would such evidence be admitted in any Court of Justice? Every Gentle-

man in this House, at all versed in the principles of evidence, must know that such an attempt would not be tolerated for a moment by a judicial Tribunal.

"But a Right Hon. Gentleman (Mr. Yorke) has assumed, that Mrs. Clarke and Miss Taylor are both in a conspiracy; and that they have forged this Letter. Is there a person, who reflects for a moment on all the circumstances of its discovery and production, that can give credit to such a supposition? It is extraordinary that not one of their means for carrying on this conspiracy has been proved or attempted to be proved. But the authenticity of the Letter appears on the very face of it. It was a mere Letter of business, wholly unconnected with any other of those circumstances, which so particularly characterized the other communications of His Royal Highness. It appears to be a hasty answer to a sudden application. 'I have received your note, and Tonyn's business shall remain as it is.'—What does it mean? Nothing more than that the business of the War Office should be stopped upon the application of this woman. *(Hear! hear!)* This circumstance alone is so strong, that, giving ample weight to every objection that has been urged against her evidence, I cannot, in my conscience, vote that His Royal Highness has not been guilty of corruption, or connivance at corruption.

"The next question is, whether the House of Commons shall vote an Address to His Majesty for the removal of His Royal Highness from the command of the army. It is contended that suspicion, however strong, is not enough to warrant such a proceeding. This doctrine I deny. Though it would be unjust to convict upon suspicion, it may still be a sufficient ground for the dismissal of a public servant from a public situation. It cannot surely be seriously contended that this House is not competent to address the Throne for the removal of a person charged with malversation in Office, until it has gone through all the numerous and tardy processes of an Impeachment. Did this House suffer a First Lord of the Admiralty (Melville) to continue at the head of that Department, because the evidence which it had received against him, was not given under the sanction of an Oath? Did not this House follow up its decision with an Address to the King for the dismissal of that Nobleman from His Majesty's Councils, and not for any act done during the period when he was at the head of the Admiralty, but for practices which had taken place many years before, and whilst he was holding another office? I am reminded, that the proceedings in evidence against Lord Melville were taken on Oath; still if the want of that sanction is so very imperative in its consequences, there is at once an end to the judicial capacity of this House. Is this

House to disfranchise itself of its rights, particularly the right and capacity of inquiring into the abuses of Establishments, or sifting the mal-practices of persons in office, forsooth, because it cannot examine under the sanction of an Oath; in a word, is this House, the guardian of the public character and credit, to be incapacitated from calling for the dismissal of those who have grossly abused the high situations in which His Majesty has placed them?

"I should be glad to know what opinion would be entertained of any other person,—of any predecessor of the Commander in Chief, if it was to be proved that his Mistress had trafficked in promotions in the Army; that wherever she had been paid, preferment followed the bribe; that so frequent were the examples as to become the subject of general notoriety; that General Officers of repute in the Service had heard and acted upon it; that the Commander in Chief himself was known, under the influence of his Mistress, to go out of his own Department into another Office, for the purpose of forwarding her projects? *(Hear! hear! hear!)* Is there a subject in these realms thus acting but would be pronounced incompetent to remain longer at the head of the Army? I know the impossibility of treating the Royal Personage, whose conduct we are now considering, by the same rules as this House would observe towards the other subjects of the Crown. Indeed, not-

withstanding the application for a trial, on the same principles as are extended to ordinary persons, it has been pretty broadly insinuated by the opposite side, that we cannot proceed to any decision against the Duke of York unless we make up our minds to alter the Succession to the Crown! *(Hear! hear!)* If such be the case, ought we in the same breath to be told, that this House should extend to His Royal Highness the same measure of impartiality to which the meanest person in the empire has a right?

"There has been much said of the duty of this House not to surrender its opinion to popular clamour, or to an improper influence without these doors. There is no person within these walls who would more strongly deprecate any improper influence upon the sober and correct judgment of this House than I would; but I must at the same time observe, that it highly becomes us, if we should differ from the well-judging and well-informed out of doors, who will strictly discuss our decisions, and appreciate our motives, to feel within our breasts that the judgment which we may pronounce is such as our conviction warrants and our conscience approves. *(Hear! hear!)* Let us recollect that it is this House which has created this public agitation; that it is this House which granted to the accused that publicity, which his Defenders so strenuously demanded; *(Hear! hear!)* that it was this House which sent by every

day's post its proceedings upon that subject to be canvassed in every corner of the kingdom! With this recollection, and with the knowledge of what the effect has been, are we now to be desired to turn a deaf ear to the opinions of the public? With every respect and attachment to the Family on the throne, we ought at least to feel an equal attachment and regard to the character and dignity of this House. If once an opinion should prevail, that this House had become insensible to the wrongs of the people, that it heard their complaints with indifference;—if such an impression should go forth, and the Representatives of the people should, to the gratification of their enemies, be ever reduced to that degraded state of servility and debasement, there is no saying what fatal consequences might follow. *(Hear! hear! hear!)*

"I entreat the pardon of the House for having so long trespassed upon its attention; *(Hear! hear!)* but I cannot sit down without declaring on my conscience, that in the whole course of my life I never gave a vote more reluctantly than I shall on this momentous question; that I have wished, from the beginning of this inquiry, to be enabled, consistently with the sacred principles of impartial justice, to pronounce a different opinion; but that from the consideration, which I have bestowed on the subject, it is not in my power to

put any other interpretation, than what I have this night delivered, upon the evidence examined at your Bar. *(Hear! hear! hear!)* The venerable Judge (Mr. Burton), who took an early part in the discussion of this question, has attested the sincerity of his vote by an affecting allusion to his age and infirmities,—to the few inducements which the remainder of his life presented to him. Though not arrived at the same period of life, nor labouring under the same afflictions as that Hon. Gentleman, yet feeling, as I do, for the prosperity of those with whose happiness mine is connected,—I have still the heart-felt satisfaction to know that whatever may be the issue of this most serious subject, I have in no degree been influenced by hope or fear, by prejudice or partiality either in the conduct I have pursued, or in the vote I shall give this night." *(Hear! hear! hear!)*

BANKRUPT LAWS BILL.

April 19, 1809.

On a Clause giving to the Lord Chancellor, or the Lord Keeper of the Great Seal, the power to grant Certificates to Bankrupts, in such cases as they should appear to have been withheld by the Cre-

ditors from improper motives, a long discussion took place, the Attorney General and Mr. Jacob contending, that it was more fit that the power of granting or withholding the Certificate should be vested in the Creditors, or in some proportion of them, than in any other Tribunal. The Solicitor General cited the opinions of Lord Thurlow, Lord Rosslyn, and Lord Clare, who had been all of them Chancellors.

Sir Samuel Romilly said, that the Hon. and Learned Gentlemen had mis-stated what was said by Lord Eldon respecting the opinions of Lords Thurlow, Rosslyn, and Clare. What those noble Lords had stated, and what had been repeated by Lord Eldon, was, that it would be dangerous to leave the determination of the Certificate entirely to the Chancellor. "The present Clause, however (said Sir S. Romilly), does no such thing; it only empowers the Chancellor to interfere if he thinks proper, upon a petition presented by a Bankrupt who has been two years without his Certificate. Now, as to fraudulent Bankrupts, all those who have any experience in the Court of Chancery, know that they obtain their Certificates more easily than those who are less dishonest. Fraudulent Bankrupts generally contrive to have false debts proved, in order to get themselves '*white-washed*,' according to the common phrase. Their Bankruptcies are for the purpose of gaining their

Certificates; whereas, honest Bankrupts have much oftener to endure the severity of the Laws from the obstinacy or caprice of some one Creditor. The people and merchants of England are generally humane; yet often great cruelties are practised, which it is the duty of the Law, if possible, to prevent. To say that from the humanity of the English character these cruelties are not common, is, in fact, to say nothing. Neither are murders common, but that is no reason that there should not be laws against them. I can state one instance of cruelty to a Bankrupt which came within my own knowledge. He had been arrested at the suit of a House in the city, and one of the Partners of that House was chosen Assignee. This Assignee delayed for three years to make any sort of dividend, in order that the House might not be obliged to make its election as to proving under the Commission. At the end of three years, however, he was obliged to make a dividend, but he then divided his debt, proving only one half. This Creditor had frequently been heard to declare, that the Bankrupt *should never go out of jail except to his grave;* and his threat was accomplished. It having been stated to the Chancellor, that the Bankrupt could not live more than two or three weeks longer in confinement, he appointed an early day to hear his Petition; but though the Decree was in favour of the Bankrupt, the Assignee

contrived to have another Detainer laid upon him, which gave rise to a more protracted litigation, and his Debtor never did leave the jail but for his grave; and there is no doubt but that the death of the Bankrupt was owing to the obduracy of the Creditor. I do not say that such cases are common, but that they should not be allowed to exist at all. Neither the life nor the perpetual imprisonment of an honest man, who has fairly surrendered his effects, should be allowed to depend upon the cruelty or caprice of partial judges."

RECALL OF EAST INDIA CADETS.

June 19, 1809.

Sir Thomas Turton brought forward his promised Motion, respecting a Resolution of the Court of Directors, to recall those persons whose appointments in India had been procured by corrupt means. After a debate, in which Mr. R. Dundas, Mr. Wallace, Mr. Stephen, the Chancellor of the Exchequer, &c. bore a part, Sir Samuel Romilly rose, and strongly protested against the Resolution of the Court of Directors: It went to punish the innocent for the guilty. However unbecoming the means might be, to which the parents of the young

men in question had resorted to procure the appointments, the latter, from their tender years, could not be justly implicated in the offence. He then dwelt upon the sacrifices of health, friends, and connexions, which those going out to India were compelled to make, and shewed the utter ruin to all their future prospects, which would be the consequence of their sudden recall: they would by no means be replaced in the situation in which they had stood before they went abroad. What should we say of Legislators who enacted punishments for the *children* of those offenders who had fled their country in order to avoid the consequence of their crimes? Yet in what did such a proceeding differ from the measure then before the House,—a measure which even professed to punish the children for the offences of their fathers?

"I am surprised (continued Sir Samuel Romilly) at the very austere notions of justice, which have been exhibited this night by Gentlemen on the other side of the House. I am astonished at witnessing so ambitious a display from those, who, but a little while before, were so ready to soften down and accommodate their principles to existing circumstances;—who have manifested, on other occasions, such generous pity and allowance for the lapses of human frailty! *(Hear! hear! hear!)* The offenders, to be sure, were rather of an higher order than that of humble Cadets! In the

case of a Secretary of State, who had been negotiating a Writership for a Seat in Parliament, the House was exhorted to look forward rather than to what was past; nay, it was persuaded to forego all censure, because the bargain had not been carried into effect! *(Hear! hear!)* In another recent case, —in that of Mr. Beauchamp Hill, who had been charged with receiving bribes to connive at frauds in the revenue, the House was, in its mercy, prevailed on to overlook all that had gone by! *(Hear! hear!)* When such has been the clemency of this House towards the guilty, on what principle of consistency shall we justify such extreme rigour against the innocent? Humanity, as well as justice, revolts from the proceeding." *(Hear! hear! hear!)*

Ayes - - - - -	35
Noes - - - - -	77
Majority against Sir T. Turton's Motion -	42

EXPEDITION TO THE SCHELDT.

January 26, 1810.

Sir Samuel Romilly expressed his opinion in support of the proposed Inquiry. If ever there was a case to be decided on its own merits, inde-

pendent of all collateral considerations and circumstances, it was the one then before the House. It was a most fallacious representation of the case which had been made by his Learned Friend, who stated, that the only question was, whether the Inquiry should be voted on that night, or on Monday. It was obvious, that any Inquiry founded on the Papers which were proposed to be laid before the House, would be delayed much longer. Though the Papers should be laid upon the Table on Monday, further time would still be required for the purpose of considering them; and if other Papers (as in all probability would be the case) should be deemed necessary, time must also be allowed for such additional Papers to be prepared, printed, and taken into consideration. It was not, therefore, fair to state, that the delay would only be for a day or two. But if the question really was, whether the Inquiry should be voted on that day or on Monday, he should decidedly prefer the earlier day.

Sir Samuel Romilly then commented on the extraordinary doctrines which had been relied on by the other side of the House. "This is the first time in my life," he continued, "that I have ever heard it gravely advanced, that we must be certain of criminality, before we resort to Inquiry! A great calamity has befallen the Country. Can any doubt be seriously entertained, whether an Inquiry into the cause or causes of that calamity

ought to take place? In the occurrences of private life, it is enough to know, that either death or some grievous injury has befallen an individual. An investigation of the cause and circumstances of the mischief follows of course. It is not left to depend on the inclinations of the suspected author; it is not deferred until the accused shall think it proper to come forward with his own apology or justification.

"An Hon. Gentleman has said, that the only object of the present motion is to turn out His Majesty's Ministers. But how can a mere Inquiry have that effect, unless the result of it shall be such as to shew that their conduct has been criminal? Why should that Hon. Gentleman be so apprehensive about its consequences? Why should he anticipate so fatal a result to men of whom he is disposed to think so highly? *(Hear! hear! hear!)* If, as he has so boldly predicted, the result of the Inquiry should be to prove, that no blame attaches to Ministers, it will only establish them more firmly in their places.—When I hear it argued, as being a matter of such little importance, whether an Inquiry shall be voted on this night, or on Monday, I cannot refrain from asking, if such is really the case, *why* Ministers have thought it worth while to give it so serious an opposition? But who, that has heard the arguments now resorted to by Ministers, can

any longer entertain a doubt of their anxious wishes and intentions to evade or to defeat, by all the means within their power, the proposed Inquiry? Is not the course which they are now pursuing, the one calculated beyond every other to promote their object? Is there a man even of those who are best acquainted with the nature and contents of the Papers intended to be produced, who has the confidence to affirm, that, even in his judgment, those Papers will be satisfactory to the House and to the Country? But if it was in fact, as it has been contended, only a question as to twenty-four hours, I would still say, that it was better to vote for Inquiry now, than to delay such a vote even for twenty-four hours. It is not only Ministers, the House itself is upon its trial, and should lose not a moment in endeavouring to acquit itself in the eyes of the Country. *(Hear! hear! hear!)* The impunity, so often afforded to Ministers upon former occasions, has given confidence to their errors; it has enabled,—it has incited them to persevere in their system of destruction, and to bring down new disasters on their devoted Country. Upon our own heads, therefore, the guilt of these calamities will rest; against us will the cries and reproaches of the widows and orphans of those, who have been sent through inglorious perils to inglorious deaths in Walcheren, be directed, if, from apathy or worse motives, we fail to pursue the authors of these evils (whoever

they may be), and to visit their guilt with the judgment it has so justly deserved! *(Hear! hear!)*

"Against one of the arguments which has been resorted to this night in order to influence the debate, and to induce this House to refuse the proposed Inquiry, I most strongly protest. It is said, that any thing, which shall prevent the present Chancellor of the Exchequer from continuing the Minister of this country, will be the means of leaving the King without a Defender! What! Shall it be said that in a Country like this,—in a Country where the Constitution is so highly reverenced,—where the Prerogatives of the Crown are scarcely held in less honour than the Rights of the People, and when the possessor of that Crown is so blest as not to have one personal enemy,—shall it be said, that His Majesty can find no other Defender than the present Chancellor of the Exchequer?" *(Hear! hear! hear!)*

Sir Samuel Romilly concluded with stating his regret, that the opinions which were expressed by many Members through their Votes in that House should be so opposite to the sentiments professed by them out of doors. When in the Country, amongst their neighbours, they were almost all for Inquiry; but when they came up to Town, they generally found some excuse for voting with Ministers. He thought there was no symptom more alarming than that the Vote of that House should be so often in opposition to the decided opinion of the Public at large.

THE CRIMINAL LAW.

February 9, 1810.

Sir Samuel Romilly moved for leave to bring in Bills to repeal the Acts, 10 and 11 William III.; 12 Ann; and 24 Geo. II. (which make the crimes of stealing privately in a Shop, goods of the value of *five* shillings; or in a Dwelling-house, or on board a Vessel in a navigable River, property of the value of *forty* shillings, capital Felonies); and spoke to the following effect:

"Sir, agreeably to the notices which have been given during the last and present Sessions, I rise for the purpose of proposing some alterations in the Criminal Law of this Country; and whatever may be the fate of the Motion which it is my intention to submit to the consideration of the House; whether my sentiments shall be ultimately sanctioned by the approbation of the Legislature, or shall be deemed inexpedient; I shall enjoy the consolation of having endeavoured, to the best of my ability, to discharge what I have long considered a very sacred duty. It is not in my nature to be sanguine in my expectations of immediate success. This question, however, has been so frequently investigated, that I do entertain some hope that the Bills which I shall have the honour to propose, will be suffered

to pass into Laws; but if my hopes prove fallacious,—if the Bills are rejected, I shall not be without the satisfaction of knowing, that, by exciting inquiry upon these important subjects, my endeavours will not be wholly without success.

"The alterations which it is my intention during this Session to suggest, will be confined, 1st, to the infliction, in certain cases, of the punishment of death; and 2dly, to the policy of transporting persons for a term of years, or the whole of life, to New South Wales. Upon the present occasion, I must request the attention of the House to the Law respecting Capital Punishments. The consideration of the law and practice of Transportation I shall defer until some future day.

"The frequency of Capital Punishments appears to me, and, I am satisfied, must appear to the whole House, to be a subject deserving of the most serious inquiry. If this sad necessity does exist, it is a necessity of which we ought to be fully satisfied, and, when satisfied, must all deplore. But of the expediency of such inflictions the gravest doubts have been entertained by some of the most enlightened of mankind. The indiscriminate application, in this country, rather of the sentence than the execution, has long been the subject of complaint; and, like many other subjects of complaint, remains unaltered. At this I neither murmur nor despair. The progress of improvement cannot, and, perhaps, ought not in-

stantly to be expected, when opposed to the practice of ages. Do we not see, that the principles so triumphantly established by Dr. Adam Smith, are yet a dead letter, in opposition to the numerous evils he has so clearly detected, and so satisfactorily explained? . . . . .

"* There is probably no other country in the world in which so many and so great a variety of human actions are punishable with loss of life as in England. These sanguinary Statutes, however, are not carried into execution. For some time past the sentence of death has not been executed on more than a sixth part of the persons on whom it has been pronounced, even taking into the calculation crimes the most atrocious and the most dangerous to society,—murders, rapes, burning of houses, coining, forgeries, and attempts to commit murder. If we exclude these from our consideration, we shall find that the proportion which the number executed bears to those convicted is, perhaps, as one to twenty; and if we proceed still further, and, laying out of the account burglaries, highway-robberies, horse-stealing, sheep-stealing, and returning from transportation, confine our observations to those larcenies, unaccompanied with

* The report of this Speech, as given in the following pages, beginning at the words, "There is probably," &c. is taken from a copy published by Sir Samuel Romilly, under the title of "Observations on the Criminal Law of England," &c. I have also thought it right to add the Notes and Postscript which accompanied that publication.

any circumstance of aggravation, for which a capital punishment is appointed by law, such as stealing privately in shops, and stealing in dwelling-houses, and on board ships, property of the value mentioned in the Statutes, we shall find the proportion of those executed reduced very far indeed below that even of one to twenty.

"This mode of administering justice is supposed by some persons to be a regular, matured, and well-digested system. They imagine, that the state of things which we see existing, is exactly that which was originally intended; that laws have been enacted which were never meant to be regularly enforced, but were to stand as objects of terror in our Statute-book, and to be called into action only occasionally, and under extraordinary circumstances, at the discretion of the Judges. Such being supposed to be our criminal system, it is not surprising that there should have been found ingenious men to defend and to applaud it. Nothing, however, can be more erroneous than this notion. Whether the practice which now prevails be right or wrong, whether beneficial or injurious to the community, it is certain that it is the effect not of design, but of that change which has slowly taken place in the manners and character of the nation, which are now so repugnant to the spirit of these laws, that it has become impossible to carry them into execution.

"There probably never was a law made in this

country which the Legislature that passed it did not intend should be strictly enforced. Even the Act of Queen Elizabeth, which made it a capital offence for any person above the age of fourteen to be found associating for a month with persons calling themselves Egyptians, the most barbarous Statute, perhaps, that ever disgraced our criminal code, was executed down to the reign of King Charles the First; and Lord Hale mentions thirteen persons having in his time been executed upon it at one assizes. It is only in modern times that this relaxation of the law has taken place, and only in the course of the present reign that it has taken place to a considerable degree. If we look back to remote times, there is reason to believe that the laws were very rigidly executed. The materials, indeed, from which we can form any judgment on this subject, are extremely scanty; for in this, as in other countries, historians, occupied with recording the achievements of princes, the events of wars, and the negotiations of treaties, have seldom deigned to notice those facts from which can be best collected the state of morals of the people, and the degree of happiness which a nation has at any particular period enjoyed. Sir John Fortescue, the Chief Justice, and afterwards the Chancellor of Henry VI. in a very curious tract on absolute and limited monarchy, in which he draws a comparison between England and France, says, that at that time more persons

were executed in England for robberies in one year than in all France in seven. In the long and sanguinary reign of Henry VIII. it is stated by Hollinshed that 72,000 persons died by the hands of the executioner, which is at the rate of 2000 in every year. In the time of Queen Elizabeth, there appears to have been a great relaxation of the penal laws, but not on the part of the Crown; and Sir Nicholas Bacon, the Lord Keeper, in an earnest complaint which he makes to Parliament on the subject, says, 'It remains to see in whose default this is;' and he adds, 'Certain it is, that Her Majesty leaveth nothing undone meet for her to do for the execution of laws *;' and it is related, that in the course of her reign 400 persons were upon an average executed in a year.

"These statements, however, it must be admitted, are extremely vague and uncertain; and it is not till about the middle of the last century, that we have any accurate information which can enable us to compare the number capitally convicted with the number executed. Sir Stephen Janssen, who was Chamberlain of London, preserved tables of the Convicts at the Old Bailey and of the executions. These tables have been published by Mr. Howard, and they extend from 1749 to 1772. From them it appears, that in 1749 the whole number convicted capitally in London and

* D'Ewes Journ. 234.

Middlesex was 61, and the number executed 44, being above two thirds. In 1750 there were convicted 84, and executed 56; exactly two thirds. In 1751, convicted 85, executed 63; about three fourths. In the seven years which elapsed, from 1749 to 1756 inclusive, there were convicted 428, executed 306; rather less than three fourths. From 1756 to 1764, of 236 convicted, 139 were executed; being much more than half. From 1764 to 1772, 457 were convicted, and of these 233 were executed; a little more than half. From this period to 1802 there has not been published any accurate statement on this subject. But from 1802 to 1808 inclusive, there have been printed, under the direction of the Secretary of State for the Home Department, regular tables of the number of persons convicted capitally; and of those on whom the law has been executed; and from these we find, that in London and Middlesex, the numbers are as follows:

	Convicted.	Executed.	
In 1802	97	10	about 1-10th.
1803	81	9	—— 1-9th.
1804	66	8	about 1-9th.
1805	63	10	about 1-6th.
1806	60	13	about 1-5th.
1807	74	14	about 1-5th.
1808	87	3	—— 1-29th.
Total	528	67	rather more than 1-8th.

"It appears, therefore, that at the commencement of the present reign, the number of Convicts executed exceeded the number of those who were pardoned; but that at the present time, those who are pardoned greatly outnumber those who are executed. This lenity I am very far from censuring; on the contrary, I applaud the wisdom as well as the humanity of it. If the law were unremittingly executed, the evil would be still greater, and many more offenders would escape with full impunity: much fewer persons would be found to prosecute, witnesses would more frequently withhold the truth which they are sworn to speak, and juries would oftener, in violation of their oaths, acquit those who were manifestly guilty. But a stronger proof can hardly be required than this comparison affords, that the present method of administering the law is not, as has been by some imagined, a system maturely formed and deliberately established, but that it is a practice which has gradually prevailed, as the laws have become less adapted to the state of society in which we live.'

"There is no instance in which this alteration in the mode of administering the law has been more remarkable, than in those of privately stealing in a shop or stable, goods of the value of five shillings, which is made punishable with death by the Statute of 10 and 11 William III.; and of stealing in a dwelling-house property of the value

of forty shillings, for which the same punishment is appointed by the Statute of 12 Ann; and which Statutes it is now proposed to repeal*. The exact numbers cannot, from any thing that has hitherto been published, be ascertained; but from Sir Stephen Janssen's tables it appears, that after laying out of the calculation the numbers convicted of murder, burglary, highway-robbery, forgery, coining, returning from transportation, and fraudulent bankruptcies, there remain convicted at the Old Bailey of shop-lifting and other offences of the same nature, in the period from 1749 to 1771, 240 persons, and of those no less than 109 were executed.

"What has been the number of persons convicted of those offences within the last seven years does not appear; but from the tables published under the authority of the Secretary of State, we

* These Statutes are not in force in Ireland; but by the Irish Stat. 9 Ann, c. 6, to steal goods to the value of five shillings or more out of any dwelling-house, or shop, or out of any stable, or coach-house, or booth in any fair or market, or privily or secretly from the person of any man or woman, is made felony without benefit of clergy; and by the Irish Stat. 17 Geo. II. c. 6, to steal privately any goods of the value of five shillings out of any warehouse, cellar, or outhouse, or to steal any goods of the same value left at any quay or on any wharf, is also punishable with death. From the returns made to the House of Commons, it appears that no person has been executed for any of these offences since the year 1804: the returns do not extend to an earlier period.

find that within that period there were committed to Newgate for trial, charged with the crime of stealing in dwelling-houses, 599 men and 414 women; and charged with the crime of shop-lifting, 506 men and 353 women; in all 1872 persons, and of these only one was executed.

"In how many instances such crimes have been committed, and the persons robbed have not proceeded so far against the offenders as even to have them committed to prison; how many of the 1872 thus committed were discharged, because those who had suffered by their crimes would not appear to give evidence upon their trial; in how many cases the witnesses who did appear withheld the evidence that they could have given; and how numerous were the instances in which juries found a compassionate verdict, in direct contradiction to the plain facts clearly established before them, we do not know; but that these evils must all have existed to a considerable degree, no man can doubt.

"Notwithstanding these facts, however, and whether this mode of administering justice be the result of design or of accident, there are many persons who conceive that it is upon the whole wise and beneficial to the community. It cannot, therefore, but be useful to examine the arguments by which it is defended. Discussions on such subjects are always productive of good. They either lead to important improvements of the law,

or they afford additional reasons for being satisfied with what is already established.

"It is alleged by those who approve of the present practice, that the actions which fall under the cognizance of human laws, are so varied by the circumstances which attend them; that if the punishment appointed by the law were invariably inflicted for the same species of crime, it must be too severe for the offence, with the extenuating circumstances which in some instances attend it, and it must in others fall far short of the moral guilt of the crime, with its accompanying aggravations: that the only remedy for this, the only way in which it can be provided that the guilt and the punishment shall in all cases be commensurate, is to announce death as the appointed punishment, and to leave a wide discretion in the Judge of relaxing that severity, and substituting a milder sentence in its place.

"If this be a just view of the subject, it would render the system more perfect, if in no case specific punishments were enacted, but it were always left to the Judge, after the guilt of the criminal had been ascertained, to fix the punishment which he should suffer, from the severest allowed by our law, to the slightest penalty which it knows; and yet who that has the use of reason would not be alarmed at the idea of living under a law which was thus uncertain and unknown, and of being continually exposed to the arbitrary severity of a

magistrate? All men would be shocked at a law which should declare that the offences of stealing in shops or dwelling-houses, or on board ships, property of the different values mentioned in the several Statutes, should in general be punished with transportation, but that the King and his Judges should have the power, under circumstances of great aggravation, respecting which they should be the sole arbiters, to order that the offender should suffer death; yet such is in practice the Law of England*.

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*The author of these Observations has been represented as an enemy to all exercise of discretion in Judges, and as recommending that in all cases the precise punishment appointed for each offence in its exact gradation of guilt, should be marked out by the law. That this, however, is not the author's system, is sufficiently apparent from the Bills which he brought into Parliament, and which invested the Judges with a large discretion, as to the degree of punishment to be inflicted for each offence; but there is a wide difference between intrusting the Judges with the power to determine the degree in which the same species of punishment may be inflicted, and leaving it dependent on their will whether the offender shall be put to death, or shall only suffer a six months' imprisonment. Mr. Justice Blackstone, indeed, tells us, that "it is one of the glories of our English law, that the species, though not always the quantity or degree of punishment, is ascertained for every offence, and that it is not left in the breast of any Judge, or even of a Jury, to alter that judgment which the law has beforehand ordained for every subject alike without respect of persons." Com. vol. iv. 377.—And yet with what truth can it be said that the species of punishment is ascertained for every offence, when in so great a number of felonies it

"In some respects, however, it would be far better that this ample and awful discretion should be formally vested in the Judges, than that the present practice should obtain; for it would then be executed under a degree of responsibility which does not now belong to it. If a man were found guilty of having pilfered in a dwelling-house, property worth forty shillings, or in a shop that which was of the value only of five shillings, with no one circumstance whatever of aggravation, what Judge whom the Constitution had intrusted with an absolute discretion, and had left answerable only to public opinion for the exercise of it, would venture for such a transgression to inflict the punishment

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remains in practice with the Judge to say whether the criminal shall suffer death, transportation, or imprisonment? or how, indeed, can this praise be justly bestowed on our Constitution even in theory, when for the crime of libel, and for some other misdemeanors, it rests by law entirely with the Judges to determine whether conviction shall be followed by a punishment which stamps with infamy, or with one to which no dishonour whatever is attached? But it is difficult for those who are solicitous to applaud every thing which they find established to be always consistent with themselves. Dr. Paley, who in the passage commented on in this tract is a strenuous advocate for an ample discretionary power in Judges, has upon another occasion observed, that "forasmuch as the ultimate sanctions of human laws are to be dispensed by fallible men, the safety as well as the liberty of the subject requires that discretion should be bound down by precise rules both of acting and of judging of actions." Assize Sermon, preached at Durham, July 1795.

of death? But if in such a case, the law having fixed the punishment, the Judge merely suffers that law to take its course, and does not interpose to snatch the miserable victim from his fate, who has a right to complain? A discretion to fix the doom of every convict expressly given to the Judges, would in all cases be exercised with great and scrupulous anxiety, and without regard to any circumstances which were extrinsic to the crime itself; but appoint the punishment by law, and give the Judge the power of remitting it, the case immediately assumes a very different complexion*.

* Before the reign of Queen Anne, when the benefit of clergy was allowed to such only as could read, and when consequently the ignorant were doomed to die for offences for which a slight punishment only was inflicted on those who had received some education, and who were therefore less excusable, the gross absurdity and injustice of the law was in a considerable degree corrected by the falsehood of the Clerk who was to report of the Convict's learning, and by the connivance of the Court. But this connivance was not universal; the Judge exercised his discretion whether to connive or not. In common cases he received the false certificate without inquiry; but where he thought that he discerned circumstances of aggravation, he scrutinized strictly into the prisoner's ability to read. Such, at least, was the practice of Lord Chief Justice Kelyng, as he himself informs us. "At the Lent Assizes at Winchester, 18 Car. 2, the Clerk," he says, "appointed by the Bishop to give clergy to the prisoners, being to give it *to an old thief*; I directed him to deal clearly with me, and not to say *legit* in case he could not read; and thereupon he delivered the book to him, and I perceived the prisoner never looked upon the book at all, and yet the Bishop's Clerk, upon the

A man is convicted of one of those larcenies made capital by law, and is besides a person of very bad character. It is not to such a man that mercy is to be extended; and the sentence of the law denouncing death, a remission of it must be called by the name of mercy; the man, therefore, is hanged; but in truth it is not for his crime that he suffers death, but for the badness of his reputation. Another man is suspected of a murder, of which there is not legal evidence to convict him; there is proof, however, of his having committed a larceny to the amount of forty shillings in a dwelling-house, and of that he is convicted. He,

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demand of *legit* or *non legit*, answered *legit*; and thereupon I wished him to consider, and told him I doubted he was mistaken, and bid the Clerk of the Assizes ask him again, *legit* or *non legit*, and he answered again something angrily, *legit*; then I bid the Clerk of the Assizes not to record it; and I told the Parson he was not the judge whether he read or no, but a ministerial officer to make a true report to the Court. And so I caused the prisoner to be brought near and delivered him the book, and then the prisoner confessed he could not read: whereupon I told the parson he had reproached his function, and unpreached more that day, than he could preach up again in many days; and because it was his personal offence and misdemeanor, I fined him five marks." (Kel. Rep. 51.) Instances of this kind afforded no just cause of complaint. The Convict, it is true, suffered the greater punishment for his offence because his parents had neglected his education, but such was the law; and though the Judge in his discretion connived at a departure from it, in nineteen cases out of twenty, he could hardly be said to deserve censure when in the twentieth he only took care that the law should not be evaded.

too, is not thought a fit object ef clemency, and he is hanged, not for the crime of which he has been convicted, but for that of which he is only suspected. A third upon his trial for a capital larceny attempts to establish his innocence by witnesses whom the Jury disbelieve, and he is left for execution, because he has greatly enhanced his guilt by the subornation of perjured witnesses.* In truth, he suffers death, not for felony, but for subornation of perjury, although that be not the legal punishment of this offence.

" If so large a discretion as this can safely be intrusted to any magistrates, the Legislature ought at least to lay down some general rules to direct or assist them in the exercise of it, that there might be, if not a perfect uniformity in the administration of justice, yet the same spirit always prevailing, and the same maxims always kept in view; and that the law, as it is executed, not being to be found in any written code, might at least be collected with some degree of certainty from an attentive observation of the actual execution of it. If this be not done, if every Judge be left to follow the light of his own understanding, and to act upon the principles and the system which he has derived partly from his own observation and his reading, and partly from his natural temper and his early impressions, the law, invariable only in theory, must in practice be continually shifting with the temper, and habits, and opinions of those

by whom it is administered. No man can have frequently attended our criminal Courts, and have been an attentive observer of what was passing there, without having been deeply impressed with the great anxiety which the Judges feel to discharge most faithfully their important duties to the public. Their perfect impartiality, their earnest desire in every case to prevent a failure of justice, to punish guilt and to protect innocence, and the total absence with them of all distinctions between the rich and the poor, the powerful and the unprotected, are matters upon which all men are agreed. In these particulars the Judges are actuated by one spirit, and the practice of all of them is uniform. But in seeking to attain the same object, they frequently do, and of necessity must, from the variety of opinions which must be found in different men, pursue very different courses. The same benevolence and humanity, understood in a more confined or a more enlarged sense, will determine one Judge to pardon and another to punish. It has often happened, it necessarily must have happened, that the very same circumstance which is considered by one Judge as matter of extenuation, is deemed by another a high aggravation of the crime. The former good character of the delinquent, his having come into a country in which he was a stranger to commit the offence, the frequency or the novelty of the crime, are all circumstances which have been upon some occasions con-

sidered by different Judges in those opposite lights*: and it is not merely the particular cir-

* Many other instances might be mentioned, in which the same circumstance may, in the different views which different men take of such subjects, be considered in the light of aggravation or of extenuation, as affording a claim to mercy, or as a reason for a rigid execution of the law. The facility with which a theft could be committed, is with him who looks merely at the moral conduct of the individual, matter of extenuation; he sees in the offender only a man who had not vigour of mind to resist a very strong temptation; but to those who consider the interests of the public, it may appear that it is only by a severe execution of the law, that such temptations can be overcome †, and that this very circumstance, therefore, furnishes a reason against relaxing the severity of the law. Is the offender young, his youth awakens compassion; "a lenient punishment perhaps may reclaim him," is the observation of one man; while another exclaims, "If so early he has reached such a pitch of depravity, what enormities may not be expected from him as he advances further in life! compassion to him would be cruelty to the public." The prisoner was intoxicated when he committed the offence: and not being at the time in possession of his reason, Titius thinks that it would be unjust to call him to a rigid account, and to exert much severity of punishment; while Sempronius sees in his drunkenness only a two-fold offence, and an additional reason for severity. It was his first offence; till the moment when he committed it he had led a life of labour and industry; and his past good conduct affords, in the judgment of Micio, ground to forgive a single transgression; but Demea upon these very habits of the culprit's former life rests his condemnation: "He was not a man without resources, and forced, as it were, because he could find no employment, to live on the plunder of the public; but having the

† This appears to have been Paley's view of the subject, vol. ii. 269, 271.

cumstances attending the crime, it is the crime itself, which different Judges sometimes consider in quite different points of view.

"Not a great many years ago, upon the Norfolk Circuit, a larceny was committed by two men in a poultry-yard, but only one of them was apprehended; the other having escaped into a distant part of the country, had eluded all pursuit. At the next Assizes the apprehended thief was tried and convicted; but Lord Loughborough, before whom he was tried, thinking the offence a very slight one, sentenced him only to a few months' imprisonment. The news of this sentence having reached the accomplice in his retreat, he immediately returned, and surrendered himself to take his trial at the next Assizes. The next Assizes came; but, unfortunately for the prisoner, it was a different Judge who presided; and still more unfortunately, Mr. Justice Gould, who happened to be the Judge, though of a very mild and indulgent disposition, had observed, or thought he had observed, that men who set out with stealing fowls, generally end by committing the most atrocious crimes; and building a sort of system upon this observation, had made it a rule to punish this offence with very great severity; and

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means of exercising honest industry, he has, without necessity, without temptation, and therefore without the possibility of excuse, plunged into guilt."

he accordingly, to the astonishment of this unhappy man, sentenced him to be transported. While one was taking his departure for Botany Bay, the term of the other's imprisonment had expired; and what must have been the notions which that little Public, who witnessed and compared these two examples, formed of our system of Criminal Jurisprudence?

"Between these two cases no distinction could be, or was attempted to be taken, either in the circumstances which attended the commission of the crime, or in the character or past conduct of the criminal. The wide difference in the punishments inflicted, proceeded entirely from the different opinions which the two Judges had formed of the nature and tendency of the crime; and if the opinions of Judges can vary so essentially upon the character of the crime itself, what inconsistent and conflicting judgments must they not necessarily often form upon that variety of circumstances in the criminal act, or in the character and life of the offender, upon which the extending or withholding mercy is to depend!

"The truth is, that in this uncertain administration of justice, not only different Judges act upon different principles, but the same Judge, under the same circumstances, acts differently at different times." It has been observed, that in the exercise of this judicial discretion, Judges, soon after their promotion, are generally inclined to

great lenity; and that their practical principles alter, or, as it is commonly expressed, they become more severe as they become more habituated to investigate the details of human misery and human depravity.

"Let us only reflect how all these fluctuations of opinion and variations in practice must operate upon that portion of mankind, who are rendered obedient to the Law only by the terror of punishment. After giving full weight to all the chances of complete impunity which they can suggest to their minds, they have besides to calculate upon the probabilities which there are, after conviction, of their escaping a severe punishment; to speculate upon what Judge will go the Circuit, and upon the prospect of its being one of those who have been recently elevated to the Bench. As it has been truly observed, that most men are apt to confide in their supposed good fortune, and to miscalculate as to the number of prizes which there are in the lottery of life, so are those dissolute and thoughtless men, whose evil dispositions Penal Laws are most necessary to repress, much too prone to deceive themselves in their speculations upon what I am afraid they accustom themselves to consider as the lottery of justice.

"Let it at the same time be remembered, as is now indeed universally admitted, that the certainty of punishment is much more efficacious than any severity of example for the prevention of

crimes. So evident is the truth of that maxim, that if it were possible that punishment, as the consequence of guilt, could be reduced to an absolute certainty, a very slight penalty would be sufficient to prevent almost every species of crime, except those which arise from sudden gusts of ungovernable passion. If the restoration of the property stolen, and only a few weeks', or even but a few days' imprisonment, were the unavoidable consequence of theft, no theft would ever be committed. No man would steal what he was sure that he could not keep; no man would, by a voluntary act, deprive himself of his liberty, though but for a few days. No man would expose himself to certain disgrace and infamy, without the possibility of gain. It is the desire of a supposed good which is the incentive to every crime: no crime, therefore, could exist, if it were infallibly certain that not good, but evil, must follow, as an unavoidable consequence to the person who committed it. This absolute certainty, it is true, can never be attained, where facts are to be ascertained by human testimony, and questions are to be decided by human judgments. But the impossibility of arriving at complete certainty, ought not to deter us from endeavouring to approach it as nearly as human imperfection will admit; and the only means of accomplishing this, are a vigilant and enlightened Police, rational rules of Evidence,

clear and unambiguous Laws, and punishments proportioned to the Offender's guilt.

"In another point of view it should seem that it would be far more expedient that the Judges should have the power vested in them by law, of appointing the punishment of every offence after it had been established with all its circumstances in proof, and of proportioning the particular nature and degree of the punishment to those circumstances, than that, for such offences as I am speaking of, so severe a punishment should be fixed by law, with a power left in the Judges, according to circumstances, of relaxing it. In the former case it is highly probable that the discretion would in practice be exercised by none but the Judges, that is, by magistrates accustomed to judicial investigations, deeply impressed with the importance of the duties which they are called on to discharge, and who from the eminence of their stations, are, and cannot but be sensible, that they are under a very great degree of responsibility to the Public. According to the practice which now prevails, this most important discretion is constantly assumed by persons to whom the Constitution has not intrusted it, and to whom it certainly cannot with the same safety be intrusted; by Prosecutors, by Juries, and by Witnesses. Though for those thefts which are made capital by law, death is seldom in practice inflicted; yet as it is the legal appointed punishment, Prosecu-

tors, Witnesses, and Juries, consider death as that which, if it will not with certainty, yet possibly may be the consequence of the several parts which they have to act in the judicial proceeding: and they act their parts accordingly, though they never can, in this indirect way, oppose themselves to the execution of the law, without abandoning their duty, and, in the case of Jurymen and Witnesses, without a violation of their oaths.

"These violations of their oaths, by Jurymen, have become so frequent, that they have lost much of the odium which should naturally belong to them. They have been even by one of the Judges described as a kind of pious perjury*. But what must be that system of laws, the evasion and disappointment of which is looked upon with so much favour, even by a person who was one of the most distinguished ornaments of the Magistracy, that he could be induced to give an epithet of such praise and honour to so detestable a crime as perjury, and to regard the profanation of the name of God in the very act of administering justice to men, as that which is in some degree acceptable to the Almighty, and as partaking of the nature of a religious duty†!

* Black. Com. vol. iv. p. 239.

† Too high a sense cannot be entertained of the sacredness of an oath, and of the importance of the judicial office; and the most fatal consequences may be dreaded from accustoming Jurymen to consider these matters with the profane levity with which

"Another, and a very important consideration, still remains. The sole object of human punish-

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their practice proves that they regard them. Ever since the passing of the Acts which punish with death the stealing in shops or houses, or on board ships, property of certain stated values, Juries have, from motives of humanity, been in the habit of frequently finding by their verdicts, that the things stolen were worth much less than had been clearly proved. It has been held, indeed, by some of the Judges (but certainly not by all of them, or at least not upon all occasions), that Juries in favour of life, may fairly, in fixing the value of the property, take into their consideration the depreciation of money, which has taken place since the Statutes passed. "That Juries," says Mr. Justice Blackstone, "should bring in larceny to be under the value of twelve pence, when it is really of a much greater value, is evidently justifiable and proper, when it only reduces the present nominal value of money to its ancient standard *." The solidity of this may well be doubted; but admitting it to be just, still, unless tables were constructed for the use of Juries, shewing the comparative values of money at different periods, a more unsafe and uncertain rule could hardly be laid down, than this of estimating property according to its value at some remoter period of our history. Even to those to whom such inquiries are familiar, it might be difficult on a sudden to make such an estimate, with the accuracy which the importance of the occasion requires; but to men of the habits and pursuits of those, from amongst whom Jurymen are usually selected, it must be quite impossible. In producing instances, however, of the extent to which Juries have endeavoured by their verdicts to correct what they feel to be great imperfections in our law, it will be expedient to recur to times in which this principle cannot be resorted to in justification of their conduct.

The year 1731-2, which is the earliest date of any trials for these offences that I happen to have met with, was only thirty-

* Com. vol. iv. p. 239.

ments, as has been often said, but can hardly be too often repeated, is the prevention of crimes;

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two years after the Act of King William had passed, and only sixteen after that of Queen Anne; and during that period there had been scarcely any sensible diminution in the value of money. Yet we find from the Sessions Papers, that, of thirty-three persons indicted in this year at the Old Bailey, for stealing privately in shops, warehouses, or stables, goods to the value of five shillings and upwards, only one was convicted, twelve were acquitted, and twenty were found guilty of the theft, but the things stolen were found to be worth less than five shillings. Of fifty-two persons tried in the same year at the Old Bailey, for stealing in dwelling-houses, money, or other property, of the value of forty shillings, only six were convicted; twenty-three were acquitted, and twenty-three were convicted of the larceny, but saved from a capital punishment by the Jury stating the stolen property to be of less value than forty shillings. In the following years, the numbers do not differ very materially from those in the year 1731.

Some of the cases which occurred about this time are of such a kind, that it is difficult to imagine by what casuistry the Jury could have been reconciled to their verdict. It may be proper to mention a few of them. Elizabeth Hobbs was tried in September 1732, for stealing in a dwelling-house, one broad piece, two guineas, two half-guineas, and forty-four shillings, in money. She confessed the fact, and the Jury found her guilty, but found that the money stolen was worth only thirty-nine shillings. Mary Bradley, in May 1732, was indicted for stealing in a dwelling-house, lace which she had offered to sell for twelve guineas, and for which she had refused to take eight guineas; the Jury, however, who found her guilty, found the lace to be worth no more than thirty-nine shillings. William Sherrington, in Oct. 1732, was indicted for stealing privately in a shop, goods

and to this end, they operate principally by the terror of example. In the present system, however, the benefit of example is entirely lost; for

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which he had actually sold for 1*l.* 5*s.* and the Jury found that they were worth only 4*s.* 10*d.*

In the case of Michael Alloin, indicted in February 1733, for privately stealing in a shop forty-three dozen pairs of stockings, value 3*l.* 10*s.*; it was proved that the prisoner had sold them for a guinea and a half, to a witness, who was produced on the trial; and yet the Jury found him guilty of stealing what was only of the value of 4*s.* 10*d.* In another case, that of George Dawson and Joseph Hitch, also indicted in February 1733, it appeared that the two prisoners, in company together at the same time, stole the same goods privately in a shop, and the Jury found one guilty to the amount of 4*s.* 10*d.* and the other to the amount of 5*s.*; that is, that the same goods were at one and the same moment of different values. This monstrous proceeding is accounted for by finding that Dawson, who was capitally convicted, had been tried before at the same Sessions for a similar offence, and had been convicted of stealing to the amount of only 4*s.* 10*d.* The Jury seem to have thought, that having had the benefit of their indulgence once, he was not entitled to it a second time, or, in other words, that having once had a pardon at their hands, he had no further claims upon their mercy.

The reason has been already given, why, in selecting these examples, recourse has been had to times so long past. It would not be difficult to mention very recent instances of as merciful but as flagrant a violation of their oaths by Jurymen, as those that have been here recited. So late as in Dec. 1808, a woman of the name of Bridget Mackallister, was indicted at the Old Bailey, for stealing a ten pound Bank of England note in a dwelling-house. The fact was clearly proved, and the Jury convicted the prisoner, but found upon their oaths that the Bank note was of the value of only thirty-nine shillings.

the real cause of the Convict's execution is not declared in his sentence, nor is it in any other mode published to the world. A man is publicly put to death. All that is told to the spectators of this tragedy, and to that part of the public who hear or who read of it, is, that he stole a sheep, or five shillings worth of goods privately in a shop, or that he pilfered to the value of forty shillings from his employer in a dwelling-house; and they are left in total ignorance that the criminal produced upon his trial perjured witnesses to prove an alibi, or some other defence, and that it is for that aggravation of his crime that he suffers death. The example cannot operate to prevent subornation of witnesses to establish a false defence, for it is not known to any but those who were present at the trial, that such was the offender's crime; neither can it operate to prevent sheep-stealing, or privately stealing in a shop, or larceny in a dwelling-house, because it is notorious that these are offences for which, if attended with no aggravating circumstances, death is not in practice inflicted. Nothing more is learned from the execution of the sentence, than that a man has lost his life because he has done that which by a law not generally executed, is made capital, and because some unknown circumstance or other existed either in the crime itself, or in the past life of the criminal, which, in the opinion of the Judge who tried him, rendered him a fit

subject to be singled out for punishment. Surely, if this system is to be persevered in, the Judge should be required in a formal sentence to declare why death is inflicted, that the sufferings and the privations of the individual might be rendered useful to society in deterring others from acting as he has done, and drawing on themselves a similar doom. The Judge would undoubtedly be required to do this if the discretion which he exercises in point of fact, were expressly confided to him by law. But, unfortunately, as the law stands, he is supposed not to select for capital punishment, but to determine to whom mercy shall be extended; although these objects of mercy, as compared with those who suffer, are in the proportion of six to one. Were recorded reasons to be required of the Judge, it will be said, they must be his reasons for extending mercy, which is his act, not his reasons for inflicting punishment, which is the act of the Law: an additional proof of the mischief which results from leaving the theory and the practice of the Law so much at variance.

"In truth, where the law which is executed is different from that which is to be found in the written Statutes, great care should be taken to make the law which is executed known, because it is that law alone which can operate to the prevention of crimes. An unexecuted law can no more have that effect, than the law of a foreign

country; and the only mode that can be adopted for making known the law which is executed, is that of stating in a written sentence the circumstances which have determined the magistrate to consider the crime as capital. Such written sentences would stand in the place of statutes, like the reported decisions in the Common Law. It must, however, be admitted, that it would be still more desirable, that, instead of having recourse to such substitutes, the law should be embodied in formal Statutes.

A further consequence of the present system is, that it deprives Juries of the most important of their functions, that of deciding upon facts on which the lives of their fellow-subjects are to depend. The circumstance of aggravation, whatever it be, for which the Judge inflicts the punishment of death, in reality constitutes the crime for which he suffers. If, for example, the Judges made it an invariable rule to leave for execution every man convicted of highway robbery, who had struck or done any injury to the person of the party robbed, and to inflict only the punishment of transportation for robbery unattended with such violence, the effect would be the same as if the crimes of mere robbery, and of robbery with violence offered to the person, so distinct in themselves, were distinguished by written laws, and were made punishable, the one with death, and the other with transportation. The effect would

be the same with respect to the punishments, but by no means the same with respect to the mode of trial. Because, if the Law had considered them as distinct offences, it would be the province of the Jury to decide whether the circumstance of aggravation, which altered the nature and description of the crime, did or did not exist; whereas, in the present system, it is the Judge alone on whom that important office is devolved. The fact of violence may in his opinion be established, though the Jury may have withheld all credit from the witness who swore it. That fact has probably not been investigated with the same accuracy as the other parts of the case, because it is to constitute no part of the finding of the Jury. It is in truth altogether immaterial to the verdict they are to pronounce, which is merely whether the prisoner be guilty or not guilty of the robbery. The same observation may be made upon every other circumstance of aggravation which decides the fate of convicted criminals; the Judge necessarily acts upon his own opinion of the evidence by which these circumstances are supported, and he sometimes proceeds upon evidence not given in open Court, or under the sanction of an oath.

"With all the objections, however, which there are to this mode of administering justice, it has long prevailed, and consequently it has many defenders. Among these there is none

whose arguments deserve more attention than Dr. Paley, not so much on account of the force or ingenuity of those arguments, as of the weight which they derive from the respectable name that is affixed to them. Every thing that is excellent in the works of so distinguished a writer, renders his errors, where he falls into error, only the more pernicious: Sanctioned by his high authority, they are received implicitly as truths by many, who, if they met with them in an author of inferior merit or reputation, would not fail to canvass them, and to detect their fallacy.

"Dr. Paley sets out by observing *, that 'there are two methods of administering Penal Justice. The first assigns capital punishment to few offences, and inflicts it invariably; the second assigns capital punishment to many kinds of offences, but inflicts it only upon a few examples of each kind †.' This implies that there are only

* Prin. of Moral and Polit. Phil. vol. ii. p. 281, 17th edit.

† The whole of the passage in Paley, here commented on, is in the following words:

"There are two methods of administering Penal Justice.

"The first method assigns capital punishment to few offences, and inflicts it invariably.

"The second method assigns capital punishments to many kinds of offences, but inflicts it only upon a few examples of each kind.

"The latter of which two methods has been long adopted in this country, where, of those who receive sentence of death, scarcely one in ten is executed. And the preference of this to

two methods of administering Penal Justice, and that a Government has only to choose between

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the former method seems to be founded in the consideration, that the selection of proper objects for capital punishment, principally depends upon circumstances, which, however easy to perceive in each particular case after the crime is committed, it is impossible to enumerate or define beforehand; or to ascertain however, with that exactness which is requisite in legal descriptions. Hence, although it be necessary to fix, by precise rules of Law, the boundary on one side, that is, the limit to which the punishment may be extended, and also that nothing less than the authority of the whole Legislature be suffered to determine that boundary, and assign these rules; yet the mitigation of punishment, the exercise of lenity, may, without danger, be intrusted to the executive magistrate, whose discretion will operate upon those numerous unforeseen, mutable, and indefinite circumstances, both of the crime and the criminal, which constitute or qualify the malignity of each offence. Without the power of relaxation lodged in a living authority, either some offenders would escape capital punishment, whom the public safety required to suffer; or some would undergo this punishment, where it was neither deserved nor necessary. For if judgment of death were reserved for one or two species of crimes only, which would probably be the case, if that judgment was intended to be executed without exception, crimes might occur of the most dangerous example, and accompanied with circumstances of heinous aggravation which did not fall within any description of offences that the Laws had made capital, and which consequently could not receive the punishment, their own malignity and the public safety required. What is worse, it would be known beforehand, that such crimes might be committed without danger to the offender's life. On the other hand, if, to reach these possible cases, the whole class of offences to which they belong be subjected to pains of death, and no power of remit-

invariably and inflexibly inflicting death in all cases in which the Law has appointed it as a

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ting this severity remains any where, the execution of the Laws will become more sanguinary than the public compassion would endure, or than is necessary to the general security.

"The Law of England is constructed upon a different and a better policy. By the number of Statutes creating capital offences, it sweeps into the net every crime, which under any possible circumstances may merit the punishment of death: but when the execution of this sentence comes to be deliberated upon, a small proportion of each class are singled out, the general character, or the particular aggravations of whose crimes, render them fit examples of public justice. By this expedient few actually suffer death, whilst the dread and danger of it hang over the crimes of many. The tenderness of the Law cannot be taken advantage of. The life of the subject is spared, as far as the necessity of restraint and intimidation permits, yet no one will adventure upon the commission of any enormous crime from a knowledge that the Laws have not provided for its punishment. The wisdom and humanity of this design furnish a just excuse for the multiplicity of capital offences, which the Laws of England are accused of creating beyond those of other countries. The charge of cruelty is answered by observing, that these Laws were never meant to be carried into indiscriminate execution; that the Legislature, when it establishes its last and highest sanctions, trusts to the benignity of the Crown to relax their severity as often as circumstances appear to palliate the offence, or even as often as those circumstances of aggravation are wanting, which rendered this rigorous interposition necessary. Upon this plan it is enough to vindicate the lenity of the Laws, that some instances are to be found in each class of capital crimes, which require the restraint of capital punishment: and that this restraint could not be applied without subjecting the whole class to the same condemnation.

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punishment; or giving to its magistrates that wide discretion which we find them invested with

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"There is, however, one species of crimes, the making of which capital can hardly, I think, be defended, even upon the comprehensive principle just now stated; I mean that of privately stealing from the person. As every degree of force is excluded by the description of the crime, it will be difficult to assign an example, where either the amount or circumstances of the theft place it upon a level with those dangerous attempts, to which the punishment of death should be confined. It will be still more difficult to shew, that, without gross and culpable negligence on the part of the sufferer, such examples can ever become so frequent, as to make it necessary to constitute a class of capital offences, of very wide and large extent.

"The prerogative of pardon is properly reserved to the chief Magistrate. The power of suspending the Laws is a privilege of too high a nature to be committed to many hands, or to those of any inferior officer in the state. The King also can best collect the advice by which his resolution should be governed; and is at the same time removed at the greatest distance from the influence of private motives. But let this power be deposited where it will, the exercise of it ought to be regarded, not as a favour to be yielded to solicitation, granted to friendship, or, least of all, to be made subservient to the conciliating or gratifying of political attachments; but as a judicial act, as a deliberation to be conducted with the same character of impartiality, with the same exact and diligent attention to the proper merits and circumstances of the case, as that which the Judge upon the bench was expected to maintain and shew in the trial of the prisoner's guilt. The questions, whether the prisoner be guilty, and whether, being guilty, he ought to be executed, are equally questions of public justice. The adjudication of the latter question is as much a function of magistracy, as the trial of the former. The public welfare is interested in both. The convic-

in this country. A terrible alternative indeed it would be, if Governments were really reduced to it. But it is very inaccurate to represent these as the only methods of administering Penal Justice. It may be, and in most countries it is, so administered, that in general the punishment assigned by the Law is inflicted, but in rare instances it is remitted by the clemency of the executive Magistrate; in other words, generally the Law is executed, and the non-execution of it forms an exception to that general rule. It may be, and in some countries it has for many years been so administered, that death has not in any case been inflicted, because not in any case appointed by the Law.

"'The preference of that method,' which is adopted in England, 'to the other, seems,' he says, 'to be founded in the consideration, that the selection of proper objects for capital punishment principally depends upon circumstances

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tion of an offender should depend upon nothing but the proof of his guilt, nor the execution of the sentence upon any thing beside the quality and circumstances of his crime. It is necessary to the good order of society, and to the reputation and authority of government, that this be known and believed to be the case in each part of the proceeding. Which reflections shew that the admission of extrinsic or oblique considerations, in dispensing the power of pardon, is a crime in the authors and advisers of such unmerited partiality, of the same nature with that of corruption in a Judge."

which, however easy to perceive in each particular case, after the crime is committed, it is impossible to enumerate or define beforehand; or to ascertain, however, with that exactness which is requisite in legal description.' If this representation be correct, this is a discretion which never can be exercised by any known or certain rules; for the same rules which would govern the exercise of the discretion, might determine and fix beforehand the different gradations of offence, and the corresponding gradations of punishment. Not only, therefore, according to Dr. Paley, is this discretion necessary, but it must necessarily be exercised in the most arbitrary manner. But why, it may well be asked, cannot circumstances, which are of such a nature that they are to determine whether a man shall suffer death or not, be pointed out prospectively and particularized in written laws? Being easily perceived after the act has been done, it cannot be difficult to express them in words before the act is committed. It is as easy to say in the form of a law, that whoever does such an act, attended with such circumstances, shall suffer death, as to say in the form of a sentence, that because an individual named has done such an act, attended with such circumstances, he shall suffer death. Dr. Paley seems to assume that it is indispensably necessary that proper objects for capital punishment should be selected by those to whom the adminis-

tration of Justice is intrusted. Whereas, in truth, the *only* proper objects of capital punishment are those who have committed acts which the public security requires should be punished with death; and *all* who have done such acts, are the proper objects of such punishment. The Laws should be so framed, that upon none but those can death be inflicted; or in other words, that capital punishment should never be resorted to but where the public security requires it. There needs no selection of objects for punishment, in those who administer the Law; the Law itself has made the selection. If there is to be any selection by those who administer the Law, it ought to be a selection of the few to whom mercy is to be extended, and not of a few on whom punishment is to fall.'

"'Hence,' he continues, 'although it be necessary to fix by precise rules of Law the boundary on one side, that is, the limit to which the punishment may be extended.'—But in truth, the boundary on the side of severity is fixed by nature, not by law. With the life of the offender, all human power over him must necessarily cease; the Legislature, therefore, which authorizes the Magistrate to take away a subject's life, cannot be said to have fixed a boundary which his severity cannot exceed. When the learned Author, therefore, observes, that it is necessary to fix by rules of Law the boundary on one side, one can

only conjecture that he meant, that it is necessary to fix by rules of Law, in what cases this unbounded discretion of its Magistrates may be exercised*.

"'The exercise of lenity,' he says, 'may, without danger, be intrusted to the executive Magistrate.' Without danger, perhaps, of being too often exercised; but with great danger in such a system as he is defending, that of 'laws never meant to be carried into indiscriminate execution, but whose severity the Legislature trusts will be relaxed as often as circumstances of aggravation are wanting in the crime †,' with very great danger, that it may not be exercised sufficiently often. The Magistrate who has the power of exercising this lenity, has also the power of not exercising it; and the non-exercise of it is, let it be remembered, nothing less than inflicting death.

"That this lenity has not been exercised so often as it ought to have been, we have the highest authority for asserting. The practice of modern times in this respect is the strongest pos-

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* It is, indeed, not a little surprising, that this writer should in another part of the same work have affirmed that in England, "in the infliction of punishment, the power of the Crown, and of the Magistrate appointed by the Crown, is confined by the most precise limitations." p. 207.

† Page 285.

sible condemnation of that which preceded it. What expressions, indeed, has our language, which could so forcibly convey the sense which the Ministers of the year 1808, entertained of the barbarous policy prevailing in the middle of the last century, when more than two thirds of the men who were capitally convicted were executed,—as their extending the mercy of the Crown to twenty-eight out of twenty-nine convicted criminals?

"'Whose [*i. e.*. the Magistrate's] discretion will operate upon those numerous unforeseen, mutable, and indefinite circumstances, both of the crime and the criminal, which constitute or qualify the malignity of each offence.' The circumstances upon which the life of a human being is to depend, are then, it seems, of such a nature, that they cannot be foreseen, fixed, or defined. Not for any offence described in any written or traditionary law, but for an unforeseeable undefinable crime, it is that the punishment of death is to be inflicted; and the same authority which approves of this, and justifies it, has itself pronounced but a few pages before *, that 'the end of punishment is the prevention of crimes,' and that 'that which is the cause and end of the punishment, ought to regulate the measure of its severity.'

* Page 274, 275.

"'Without the power of relaxation lodged in a living authority,' adds Dr. Paley, 'either some offenders would escape capital punishment whom the public safety required to suffer, or some would undergo that punishment where it was neither deserved nor necessary.'—What the public safety requires is, that crime should be prevented by the dread of death, whenever the dread of a less evil will not be efficacious. In no other way can the public safety require the death of any individual. For with respect to the mischief which the individual himself might do, it may always be guarded against by secure imprisonment; the real question therefore is, whether the exercise of this power of relaxing the law is better calculated to prevent crimes, than the constant and regular execution of known laws; and it is a question which one would suppose could hardly be of difficult solution, for those who think with Dr. Paley, that 'the certainty of punishment is of more consequence than the severity *.'

"'—or, some would undergo that punishment where it was neither deserved nor necessary.' It should seem, that in the opinion of this writer, the punishment of death is sometimes deserved when it is not necessary, and is sometimes necessary when it is not deserved. This distinction, however, appears to be founded upon the most

* Page 306.

erroneous notions of Criminal Law. It is upon the ground of necessity alone, that the inflicting death as a punishment can ever be justified. What, indeed, are the ideas which this writer means to convey by the terms 'deserving this punishment,' and by those of 'meriting the punishment of death,' which he uses in the following page, it is extremely difficult to conjecture. One would suppose, indeed, that he entertained some vague notion of 'the satisfaction of justice,' or of 'the retribution of so much pain for so much guilt,' if he had not himself formally, at the outset of his dissertation upon crimes and punishment, protested against such being in any ease 'the motive or occasion of human punishment *.'

"The evil, it seems, to be guarded against, is that of the punishment of death being sometimes inflicted where it is neither deserved nor necessary. Now, in whatever sense these words be used, it is most certain, that that evil still must continue where the exercise of lenity is to depend upon human, that is, upon fallible judgments. We know almost with certainty of some cases, that if they were submitted to the discretion of two different individuals, one would be for exercising lenity, and the other for enforcing the law, each

* Page 275.

acting from the best of motives, each satisfied that he was conscientiously discharging his duty, the one by executing the law, the other by extending mercy; and who should presume to say which of them had 'suffered an offender to escape capital punishment, whom the public safety required to suffer;' and which had 'inflicted that punishment where it was neither deserved nor necessary?'

"'If judgment of death,' continues Dr. Paley, 'were reserved for one or two species of crimes only, which would probably be the case if that judgment were intended to be executed without exception; crimes might occur of the most dangerous example, and accompanied with circumstances of heinous aggravation, which did not fall within any description of offences that the Law had made capital, and which consequently could not receive the punishment their own malignity and the public safety required.' Undoubtedly if it were intended that the laws should be executed, we should not in an age which persuades itself that humanity is amongst its peculiar characteristics, see the punishment of death affixed to so long a catalogue of crimes as appear in the English Statutes; but yet no reason can be assigned, as long as death is retained in our Law as a punishment, why it should not, even in laws meant to be rigorously executed, be the appointed

punishment for crimes 'of the most dangerous example, accompanied with circumstances of heinous aggravation.' What danger could there possibly be that we should lessen the power of inflicting punishment on crimes of most dangerous example, accompanied with circumstances of heinous aggravation, by striking out of the Statute-book the Acts which inflict death for the offences of privately stealing to the value of five shillings in a shop, of stealing forty shillings' worth of property in a dwelling-house, or of stealing cloth from bleaching-grounds?

"'What is worse,' he adds, 'it would be known beforehand that such crimes might be committed without danger to the offender's life.' If this be an evil,' it is an evil that the law should be known, or that there should be any law at all; for unknown laws are the same as non-existing laws. It is a necessary consequence of knowing what actions are punishable by law, that it should also be known what a man may do without fear of punishment; and it is not a little extraordinary, that in a country in which men have been accustomed to think that one of the greatest political blessings they enjoyed, was, that they lived in the security which known and certain laws afforded them, we should be told by a writer of such high character and such extraordinary merit as Dr.

Paley, that it is a good that laws be not known, because, if known, they might be evaded.

"Undoubtedly it would be a great mischief if actions dangerous to the public safety could be committed with impunity, and much more, if, in the language of this writer, 'men could adventure upon the commission of enormous crimes from a knowledge that the Law had not provided for their punishment*.' But what must be the character of that code of laws which leaves enormous crimes without punishment provided for them? and what other remedy is there for this evil than that which Dr. Paley himself recommends, when he reprobates the use of acts of attainder and bills of pains and penalties? 'Let the Legislature, admonished of the defect of the laws, provide against the commission of future crimes of the same sort†.'

"The terms, 'enormous crimes,' and 'heinous aggravations,' are of so vague and indefinite a nature, that it is not possible to ascertain with accuracy in what sense they are here used; but understanding them in their common and popular acceptation to mean actions of great moral depravity, it is not easy to understand how the punishment of them is secured by the system which Dr. Paley defends. On the one hand, it is not at all evident, how the stealing privately in a shop, or

* P. 284. † P. 239.

the stealing from bleaching-grounds, or the stealing of sheep, can under any circumstances be considered as an enormous crime, or accompanied with heinous aggravations: and on the other, it must be admitted, that sanguinary as our Law is, numerous as are our capital offences, wide, to use Dr. Paley's own metaphor, as the penal net is spread, there are many acts of the greatest moral depravity, for which neither the punishment of death, nor any other punishment of great severity, is provided. A guardian who has defrauded his ward of the property with which he was intrusted for her benefit, and who has besides seduced her and turned her out upon the world a beggar and a prostitute; a man who being married, has concealed that fact, and having gained the affections of a virtuous woman, has persuaded her to become his wife, knowing at the same time that the truth cannot long be concealed, and that, whenever disclosed, it must plunge her into the deepest misery, and must have destroyed irretrievably all her prospects of happiness in life, has surely done that which better deserves the epithet of enormous crime, accompanied with heinous aggravation, than a butler who has stolen his master's wine*.

* The crime of bigamy (which is made felony by the Statute of 1 Jac. 1. c. 11, and which by the 35 Geo. 3. c. 67, is punishable with transportation for seven years or imprisonment) comprehends two species of offences, differing greatly from each

It is not a great many years ago since an attorney. made it a practice, which for some time he carried

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other in their character and effects, and in their degree of moral guilt; and the circumstances which mark the distinctions between these different offences are clear and unequivocal. If the atrocity of a crime is to be measured by the extent of the wrong done to the person who is the victim of it, few crimes can be more atrocious than that of a married man, who by representing himself to be a bachelor, prevails on a modest woman to become his wife. He possesses himself by fraud of her person, knowing that he may at any moment dismiss her as a prostitute from his bed; and nothing can exceed the horror she must feel, whenever the secret of his first marriage being divulged, she shall be awakened to her real situation, and shall find herself despoiled of her honour, and that the children she has borne are bastards and outcasts. The real nature of this crime is that of a fraudulent and most aggravated seduction effected under colour of law, with all the solemnities of religion, and under such circumstances that no prudence or caution could effectually guard against it. But he who before his second marriage apprizes the woman that he is already a husband, does *her* no wrong. His offence is one to the state alone, and consists in nothing but the public scandal it affords. The bigamist who had concealed his first marriage from his victim is equally guilty of this outrage on public decency, and has besides done one of the greatest possible injuries to an individual.

It results from these considerations, that in a woman the crime of bigamy can never be so heinous as in a man, and that in a man the heinousness of the crime consists altogether in the concealment of the former marriage. Mr. Justice Blackstone however, not adverting to those distinctions, tells us that bigamy, "has been made felony by reason of its being so great a violation of the public economy and decency of a well-ordered state." "It is that," he says, "which never can be endured under any rational civil establishment; and in northern countries," he observes, "the very

on successfully, to steal men's estates by bringing ejectments, and getting some of his confederates to personate the proprietors, and let judgment go by default, or make an ineffectual defence; the consequence was, that he was put into possession by legal process, and before another ejectment could be brought, or the judgment could be set aside, he had swept away the crops, and every thing that was valuable on the ground. If for this any punishment be provided by law*, it is one far less severe than for the crime of petty larceny. That any of the actions which I have mentioned, merit the punishment of death, I certainly do not affirm. I have no criterion, and the learned author has furnished me with none, by which to determine how death is deserved; but I am sure that stealing a few yards of riband or of

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nature of the climate seems to recoil against it." Com. vol. iv. p. 163. But he does not even glance at the injury done to the woman who suffers from the crime; and even the more philosophical author of the "Principles of Penal Law" defines polygamy only to be "a gross species of adultery, aggravated by the profanation of a religious rite." p. 105.

Although, as has been already observed, this is in women a crime of much less magnitude than in men, yet until the Stat. of 3 and 4 W. and M. (which extended the benefit of clergy to women) passed, it was punishable in female offenders with death, but in males only with burning in the hand and a year's imprisonment.

* Perhaps under the notion of conspiracy this might be indictable, but certainly under no other.

lace in a shop, is an offence far below them in the scale of moral guilt.

" ' On the other hand, if to reach these possible cases, the whole class of offences to which they belong, be subjected to the pains of death, and no power of remitting this severity remains any where, the execution of the law will become more sanguinary than the public compassion would endure, or than is necessary to the general security.' This is an argument to prove that a power of pardoning ought to exist somewhere; but that is a proposition which has not been disputed, and which has really no application to the question whether the English system be better or worse than that which prevails in other countries. The supposition, that there is no other alternative than that of excluding the power of pardon altogether, or preserving such a code of laws, and that pardons must necessarily be much more frequent, even in the proportion of ten to one, than the execution of the law, exists only in the imagination of this writer; and yet his whole defence of the present prevailing system is founded upon this supposition.

" ' The Law of England is constructed upon a different policy.' Not the *Law* of England, but the *practice* which in the administration of Criminal Law prevails in England; a practice which is in truth an almost continual suspension and interruption of the Law.

" ' By the number of Statutes creating capital

offences, it sweeps into the net every crime, which under any possible circumstance may merit the punishment of death. If this be effected at all, it certainly is not by the number of Statutes that it is effected. One single Act, taking away the benefit of clergy from all felonies, would have done this much more effectually than a multitude of Statutes, some applying to the different articles which may be stolen, and others to the different places in which the crime may be committed. But it is in truth very difficult to collect the meaning of this passage; if it were admitted that the stealing of a sheep or a horse, might, under some possible circumstances, merit the punishment of death, how happens it that there are no possible circumstances which imagination can suggest, that would make the stealing of a hog or a mule deserving of the same fate? and yet these offences, with whatever aggravations they may be committed, are secure from being swept into the penal net. There is nothing surely in this sentence that any one can approve, unless it be the happy choice of the metaphor. None indeed could have been found, which could have more forcibly described the situation of a man, who, taking his notion of law from what he sees executed, and therefore thinking that the offence which he had committed could only subject him to imprisonment or transportation, finds to his surprise that he has forfeited his life. I remember hearing a person

who had been present at a trial, describe the astonishment which was expressed in the language, and painted in the countenance of a wretch, who was convicted of stealing his master's wine, at finding that the sentence pronounced upon him was that of death, or, to use the language of Paley, at finding himself inextricably entangled in the fatal net.' Fatal indeed it was to him, for the Judge left him for execution.

"'When the execution of this sentence comes to be deliberated upon.'—It should be observed, that with the exception of prisoners tried at the Old Bailey, these are not the joint deliberations of a council, or even the consideration of different cases by the same individual, who would probably be always governed by the same principles, but the separate deliberations of different individuals, having no common rule or standard to refer to, all, indeed, equally impressed with the importance of their duty, and actuated by the same desire to discharge it properly, but having each his own peculiar notions of the general character or particular aggravations of each offence.

"'A small proportion of each class are singled out, the general character or the peculiar aggravations of whose crimes render them fit examples of public justice.'—But where the *general character* of the crime is such as to render it a fit example of public justice, how can the necessity for the exercise of this discretion exist? The general cha-

racter of a crime surely cannot be considered as one of those 'circumstances which it is impossible to enumerate or define beforehand,' or even which cannot be 'ascertained with that exactness which is requisite in legal description;' and yet it is upon the supposed existence of circumstances easy to be noted after the crime has been committed, but impossible to be beforehand defined, that the writer's defence of this system is principally founded.

'"In what indeed consists the difficulty of marking out in general laws, the peculiar aggravations of crime which ought to be attended with aggravation of punishment, Dr. Paley has left altogether unexplained; and, indeed, a little farther on*, as if to convince his readers that there is really no difficulty in the case, he himself enumerates the several 'aggravations which ought to guide the magistrate in the selection of objects of condign punishment.' 'These,' he says,' 'are principally three, repetition, cruelty, and combination.' 'In crimes,' he adds, 'which are perpetrated by a multitude or by a gang, it is proper to separate in the punishment, the ringleader from his followers, the principal from his accomplices, and even the person who struck the blow, broke the lock, or first entered the house, from those who joined him in the felony.' Every one of the aggravations here enumerated, is undoubtedly as capable of being

* P. 288.

clearly and accurately described, in written laws, and as proper to be submitted to the decision of a Jury, as the crimes themselves.

"The reason, indeed, which Dr. Paley gives for considering the circumstances which he last mentions as aggravations which ought to determine the fate of convicts, shews in the strongest possible light the necessity of their being stated in written laws. It is 'not,' he says, 'so much on account of any distinction in the guilt of the offenders, as for the sake of casting an obstacle in the way of such confederacies, by rendering it difficult for the confederates to settle, who shall begin the attack, or to find a man amongst the number willing to expose himself to greater danger than his associates.' Now, for this selection of offenders for severer punishment to produce the effects which are here pointed out as its objects, it is indispensably necessary, not only that the selection should be constantly and invariably governed by the aggravations here enumerated, but that this should be made known to the public; and such a constant, invariable, and notorious practice can be secured by no other means than by laying it down as a certain and inflexible rule in a public law. That all, or that even a majority of the Judges, exercise the tremendous discretion with which they are invested, upon the principles here stated by Dr. Paley, I am sure no one will pretend. That any one of them has adopted these

principles is what I have never heard; and yet it is only by the principles being known, that the practice can effectuate its end.

"'By this expedient,' he proceeds, 'few actually suffer death, whilst the dread and danger of it hang over the crimes of many.' The *chance* of it, he should rather have said, hangs over the crimes of many. For the dread of punishment to prevent crimes, punishment must, as nearly as can be effected, be the certain consequence of committing them. Whereas, all that is done by the administration of penal justice, in that method which Dr. Paley declares to be the best, is to make the punishment of death the possible, but by no means the probable consequence of the crime. The dread that the offender may have the ill fortune to be the one who suffers, and not among the nine convicted offenders who escape, will undoubtedly have some, but it will be but a feeble influence towards the prevention of offences.

"'The wisdom and humanity of this design furnish a just excuse for the multiplicity of capital offences which the laws of England are accused of creating beyond those of other countries.' It is really not a little surprising, that in this peculiar mode of administering Criminal Law in England, an apology should be found for the great 'number of our Statutes creating capital offences.' It might have been imagined that one advantage of such a system, by which it is left to those who exercise

the Law to discriminate and to find out the circumstances which are to characterize, to extenuate, or to aggravate offences, would be, that the laws being extremely general, might be few in number, and simple and concise in their enactments. If we had adopted a system directly contrary to that which is unhappily established amongst us; if, in our anxiety to secure such important objects, as that no life should be destroyed of which the public safety did not require the sacrifice, and that that sacrifice should always be exacted where it really was necessary, we were to frame laws which should distinguish accurately the general character of different offences, and enumerate all the peculiar aggravations with which they might be attended, and should leave unforeseen and unnoticed no human action which was dangerous by its example, or heinous in its circumstances, we might indeed have a good excuse to offer for the multiplicity of our Penal Laws.

"'The charge of cruelty,' continues Dr. Paley, 'is answered by observing, that these laws were never meant to be carried into indiscriminate execution; that the Legislature, when it establishes its last and highest sanctions, trusts to the benignity of the Crown to relax their severity as often as circumstances appear to palliate the offence, or even as often as those circumstances of aggravation are wanting which rendered this rigorous interposition necessary. Upon this plan

it is enough to vindicate the lenity of the laws, that *some* instances are to be found in each class of capital crimes which require the restraint of capital punishment; and that this restraint could not be applied without subjecting the whole class to the same condemnation.' It may well be doubted whether this be a satisfactory answer to the charge of cruelty. To subject by law ten men to the punishment of death, because one of them has, in the opinion of the Legislature, deserved it, or, to speak more properly, has done that which makes it necessary to the public safety that his life should be sacrificed, and then 'trust to the benignity' of the magistrate to discover the nine, against whom it was 'never meant that the Law should be carried into execution;' to have no better security for the proper execution of this most important office, than the benignity of the magistrate, and to afford him no light to guide him in the exercise of that benignity, is after all a very cruel conduct in those who are the makers of the Law. The severity of our Statutes is, it seems, to be relaxed, whenever those circumstances of aggravation are wanting which render so rigorous an interposition necessary; and yet the Legislature is totally silent as to those aggravations. It omits any mention of the circumstances, without which its law is not to have the force of law. The Legislature means that death shall be inflicted only in a given case, and it carefully avoids saying what that case is.

While it openly denounces death for a certain crime, it really means that death shall be inflicted only if the guilt of some additional crime is added to it; and instead of particularizing that additional guilt, it leaves it to those who are to execute the Law, first to imagine what the Legislature meant, and then to discover those undescribed circumstances in each particular case.

"When this author tells us that the particular instances which require the restraint of capital punishment, could not be subjected to that restraint, without, at the same time, subjecting to it all the other offences which fall under the same class, but which do not require it, he assumes the very point which it was incumbent on him to prove. But even if, for the moment, we concede to him, that which is the matter in dispute, how can this afford any justification of our sanguinary laws, unless, indeed, we are to reverse what has been considered as a maxim of criminal jurisprudence, and to say that it is better that ten men who do not deserve* death should suffer it, than that one who has deserved it should escape†?

* It can hardly be necessary to apologize for the use of this word, or to shew that it is not here liable to the objection made to it as used by Paley.

† The maxim, that it is "*better for ten guilty persons to escape than for one innocent man to suffer*," is mentioned with ap-

"In this short passage there is another important point taken for granted, which long has been,

probation by Mr. Justice Blackstone *, but is contested by Dr. Paley. "If by better," he says, "be meant that it is more for the public advantage, the proposition I think cannot be maintained. The security of civil life, which is essential to the value and enjoyment of every blessing it contains, and the interruption of which is followed by universal misery and confusion, is protected chiefly by the dread of punishment †." By the dread of punishment, it is true, but of punishment as a consequence of guilt, not of punishment falling indiscriminately on those who have not, and on those who have, provoked it by their crimes. The security of civil life is undoubtedly the first object of all penal laws; but by nothing can that security be more grievously interrupted than by the innocent suffering for the crimes of the guilty. It should seem from the animadversions of Dr. Paley, that he imagined that those who have adopted this maxim, treat the escape of ten guilty persons as a trivial ill; whereas, they deem it an evil of very great magnitude, but yet one less destructive of the security and happiness of the community, than that one innocent man should be put to death with the forms and solemnities of justice.

"The misfortune," continues Dr. Paley, "of an individual, for such may the sufferings, or even the death of an innocent person be called, when they are occasioned by no evil intention, cannot be placed in competition with this object." He here speaks of the sufferings and privations endured by the victim, as if they were the only evils resulting from the punishment of the innocent. He overlooks entirely the mischiefs which arise from the consideration, that the most perfect innocence, and the most implicit submission to the laws, cannot afford security to those who possess the one and practise the other. He leaves altogether out of his consideration that disrespect for the tribunals which is the necessary consequence of so terrible a failure in the administration of

* Com. b. iv. ch. 27. † Prin. of Moral and Pol. Phil. vol. ii. p. 310.

and still is, a matter of much controversy; namely, that in each class of capital crimes there are

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justice. He does not reflect how much the effect of example must be weakened by men being taught from what they have themselves witnessed, that the wretch, whom they see consigned to punishment, may be in the highest degree unfortunate, and in no degree guilty. He does not take into his account the hope which the punishment of an innocent man ever affords to the guilty, by placing in so striking a point of view, the fallibility of our tribunals; and by shewing how uncertain it is that punishment will be the consequence of guilt. Could the escape of ten of the most desperate criminals have ever produced as much mischief to society, as did the public executions of Calas, of Montbailli, or of Lebrun? The state of insecurity in which men were placed by some of these fatal errors in the administration of justice in France, is strongly exemplified by the saying of a man of considerable eminence in that country, who declared, that if he were accused of stealing the towers of Notre Dame, he would consult his safety by flight rather than risk the event of a trial, though the crime imputed to him was manifestly impossible.

Dr. Paley goes on to observe, that "Courts of Justice should not be deterred from the application of their own rules of adjudication, by every suspicion of danger, or by the mere possibility of confounding the innocent with the guilty." And in this observation every body must agree with him. If Courts of Justice were never to inflict punishment where there was a possibility of the accused being innocent, no punishment would in any case be inflicted. In those instances in which the proof of guilt seems to be most complete, the utmost that can be truly affirmed of it is, that it amounts to a very high probability: no truth, that depends on human testimony, can ever be properly said to be demonstrated. Human witnesses may utter falsehood, or may be deceived. Even where there have been a number of concurrent and unconnected circumstances, which have appeared inexplicable upon any hypo-

some instances to be found which require the restraint of capital punishment. Let us take, by

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thesis but that of the accused being guilty, it has yet sometimes been made evident that he was innocent. Nay, in some instances where men have borne evidence against themselves, and have made a spontaneous confession of the crimes imputed to them, not only they were not, but they could not be guilty, the crimes confessed being impossible. With the wisest laws, and the most perfect administration of them, the innocent may sometimes be doomed to suffer the fate of the guilty; for it were vain to hope, that from any human institution, all error can be excluded. Yet these are considerations which are calculated very strongly to impress upon Courts of Justice, not indeed that they "should be deterred from the application of their own rules of adjudication," but that they should use the utmost care and circumspection in the application of those rules; that in a state of things where they are so liable to error they cannot be too anxious to guard against it; and that if it be a great public evil, as it undoubtedly is, that the guilty should escape, it is a public evil of much greater magnitude, that the innocent should suffer. It should be recollected too, that the object of Penal Laws is the protection and security of the innocent; that the punishment of the guilty is resorted to only as the means of attaining that object. When, therefore, the guilty escape, the Law has merely failed of its intended effect; it has done no good, indeed, but it has done no harm. But when the innocent become the victims of the Law, the Law is not merely inefficient, it does not merely fail of accomplishing its intended object; it injures the persons it was meant to protect, it creates the very evil it was to cure, and destroys the security it was made to preserve.

"They ought rather," continues Paley, "to reflect, that he who falls by a mistaken sentence, may be considered as falling for his country, whilst he suffers under the operation of those rules, by the general effect and tendency of which the welfare of the com-

way of example, the crime of privately stealing in a shop to the value of five shillings. It is the

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munity is maintained and upheld." Nothing is more easy than thus to philosophize and act the patriot for others, and to arm ourselves with topics of consolation, and reasons for enduring with fortitude the evils to which, not ourselves, but others are exposed. I doubt, however, very much, whether this is attended with any salutary effects. Instead of endeavouring thus to extenuate, and to reconcile to the minds of those who sit in judgment upon their fellow-creatures, so terrible a calamity as a mistake in judicature to the injury of the innocent, it would surely be a wiser part to set before their eyes all the consequences of so fatal an error in their strong but real colours; to represent to them, that of all the evils which can befall a virtuous man, the very greatest is to be condemned and as suffer if he were guilty; to see all his hopes and expectations frustrated; all the prospects in which he is indulging, and the pursuits which he is following, for the benefit, perhaps, of those who are dearer to him than himself, brought to a sudden close; to be torn from the midst of his family; to witness the affliction they suffer; and to anticipate the still deeper affliction that awaits them: not to have even the sad consolation of being pitied; to see himself branded with public ignominy; to leave a name which will only excite horror or disgust; to think that the children he leaves behind him, must, when they recall their father's memory, hang down their heads with shame; to know that even if at some distant time it should chance that the truth should be made evident, and that justice should be done to his name, still that his blood will have been shed uselessly for mankind, that his melancholy story will serve, wherever it is told, only to excite alarm in the bosoms of the best members of society, and to encourage the speculations for evading the Law, in which wicked men may indulge.

Let us represent to ourselves the Judges who condemned Calas to die, apologizing for their conduct with the reasoning of

opinion of many, that no instance ever occurred of that crime which rendered it a fit subject of

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Paley; admitting that it was a great misfortune to the individual, but insisting that it was none to the public, and that even to the individual the misfortune was greatly alleviated by the reflection, that his example would tend to deter parents in future from embruing their hands in the blood of their children, and that in his instance the sufferings of the innocent would prevent the crimes of those who had a propensity to guilt. With what horror and disgust would not every well-formed mind shrink from such a defence!

When we are weighing the evil of the punishment of one innocent man against that of the impunity of ten who are guilty, we ought to reflect, that the suffering of the innocent is generally attended in the particular instance with the escape of the guilty. Instances have, indeed, occurred, like that which I have already mentioned of Calas, where a man has been offered up as a sacrifice to the laws, though the laws had never been violated: where the tribunals have committed the double mistake of supposing a crime where none had been committed, and of finding a criminal where none could exist. These, however, are very gross, and therefore very rare examples of judicial error. In most cases the crime is ascertained, and to discover the author of it is all that remains for investigation; and in every such case, if there follow an erroneous conviction, a two-fold evil must be incurred, the escape of the guilty, as well as the suffering of the innocent. Perhaps amidst the crowd of those who are gazing upon the supposed criminal, when he is led out to execution, may be lurking the real murderer, who, while he contemplates the fate of the wretch before him, reflects with scorn upon the imbecility of the Law, and becomes more hardened, and assumes more confidence in the dangerous career upon which he has entered.

capital punishment. The circumstances, indeed, which induced the Legislature to make this offence capital, the facility with which it may be committed, and the supposed necessity of protecting by such severity industrious tradesmen in the exercise of their calling, make it hardly possible that it should be committed under any peculiar aggravations. The Legislature has in this case marked out what the policy, which suggested the measure, induced it to consider as aggravations; that the theft was committed privately, that it was in a shop, and that the thing stolen is of five shillings value. What, to follow the spirit of the law, can possibly be considered as aggravations? Are they, that the shop was very much frequented, and was crowded with customers; that the theft was committed with such extraordinary address as to elude the utmost vigilance; or that the property stolen was of a value very greatly beyond that which is mentioned in the Statute? Surely no person can contend that any one of these circumstances can make such an alteration in the offence, that with it the crime should be punished with death, and without it, should be subjected to a slighter punishment. Least of all can the value of the property stolen be such an aggravation; because the law was intended to afford a protection to tradesmen, in instances where they could not exert a sufficient vigilance for their own

protection; but in articles of considerable value, they are bound to exert that vigilance. To such an instance we may apply the language which Paley has applied to another: 'It will be difficult to shew, that without gross and culpable negligence on the part of the sufferer, such examples can ever become so frequent as to make it necessary to constitute a class of capital offences of very wide and large extent*.' In truth, none of these circumstances have, I believe, been considered by any of the Judges as sufficient aggravations to warrant their suffering this cruel law to be executed. It has been executed, indeed, in instances where the offenders were of very bad character, had been tried and acquitted for other and much more heinous crimes, or had set up a false defence, and produced witnesses to prove it; yet these are all circumstances foreign to the object of the Legislature in protecting retail trades, and fall not within any of the principles which ought, according to Dr. Paley, to govern the exercise of this discretion.

" 'The prerogative of pardon is properly reserved to the chief magistrate. The power of suspending the laws is a privilege of too high a nature to be committed to many hands, or to those of any inferior officer in the State†. The

* P. 286.

† So much is Dr. Paley an advocate for a discretionary power in the punishment of offences, that he justifies imprisonment for

King also can best collect the advice by which his resolutions shall be governed.' Those who to

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debt on principles of penal law, and seems to think, that as no discretion is likely to be so well informed, so vigilant, or so active, as that of the creditor himself, he is properly by the Law of England both judge and party. "Consider it," he says, "as a public punishment, founded upon the same reason, and subject to the same rules as other punishments, and the justice of it, together with the degree to which it should be extended, and the objects upon whom it may be inflicted, will be apparent*****. The only question is, whether the punishment be properly placed in the hands of an exasperated creditor: for which *it may be said*, that these frauds are so subtile and versatile, that nothing but a discretionary power can overtake them, and that no discretion is likely to be so well informed, so vigilant, or so active, as that of the creditor." Prin. of Mor. and Pol. Phil. vol. i. p. 163, 164. It is true, that the author does not state this directly as his own opinion, but from the whole context it is fairly to be inferred that it is an opinion of which he does not disapprove; and he seems wholly to have forgotten that impartiality is a quality still more necessary in a Judge, even than knowledge, vigilance, and activity; and that if the power of pardoning be, in his own language, "a privilege of too high a nature to be committed to the hands of any inferior officer in the State," it must be of too high a nature to be committed to obscure and interested individuals, who, for the exercise of it, are not responsible even to public opinion. It is some relief to one's mind, after reading this passage in Dr. Paley, to recollect the words of Mr. Burke, who condemns imprisonment for debt for the very reason, that "it operates to change a civil into a criminal judgment, and to scourge misfortune or indiscretion with a punishment, which the Law does not inflict on the greatest crimes," and who observes, that it is an additional fault in the system, that "the inflicting of that punishment depends not on the opinion of an equal and public Judge, but is referred to

every attempt at improvement are accustomed to oppose a panegyric on our Law and Constitution, frequently adopt a course which is very convenient for their purpose. As theory and practice are often upon these subjects very dissimilar, and are sometimes in direct opposition to each other, they select for the topic of their encomium whichever they can represent in the most favourable light; and of this we have here a very remarkable instance. In every thing which Dr. Paley has hitherto said, it is the established practice, a practice which alters and almost supersedes the written law, which he has been vindicating; but now he suddenly takes an opposite course, and holds up to our admiration a part of the Constitution which exists in theory, but is almost abrogated in practice*. In every county of England but Middlesex,

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the arbitrary discretion of a private, nay, interested and irritated individual. 'He who formally is, and substantially ought to be the Judge, is in reality no more than ministerial, a mere executive instrument of a private man, who is at once judge and party. Every idea of judicial order is subverted by this procedure. If the insolvency be no crime, why is it punished with arbitrary imprisonment? If it be a crime, why is it delivered into private hands to pardon without discretion, or to punish without mercy and without measure?" *Speech at Bristol in* 1780.

* There is perhaps no instance in which the difference between our Law in its solemn denunciations and in actual practice is more remarkable than in the crime of High Treason. Although the sentence uniformly pronounced by the Judge, is one which it is never intended should be executed, it is still suffered

and in every part of Wales, this privilege of suspending the laws, high as it is, is exercised, not by

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to remain a part of our Law. It remains a just subject of reproach to us by foreigners, and answering amongst ourselves no other purpose than, at a very awful moment, to distract the reason, and terrify the imagination of each miserable Convict by an enumeration of horrible barbarities which with judicial and religious solemnity he is told that he is to undergo. He is to be drawn to the place of execution, and there to be hanged, but not till he is dead; he is to be cut down, and his entrails taken out, and burned while he is yet alive. His head is then to be cut off, and his body is to be divided into four quarters, and to be at the King's disposal. Here there is no discretion reposed in the Judges; they are bound to pronounce this cruel and disgusting sentence, and all discretion is transferred to the Executioner. He is allowed, if he thinks fit, to defeat the intention of the Law, by suffering the Criminal to remain suspended till he is dead; he may, if such be his pleasure, omit the embowelling altogether; and it is to the humanity of the Hangman that it is left to temper the savage severity of the Law. That humanity however has not been always exerted: "there are few instances," says Mr. J. Blackstone, Com. vol. iv. p. 377, ("and those accidental or by negligence,) of persons being embowelled till previously deprived of sensation by strangling." There are few instances, but there are some. It depends therefore, not on the aggravation to be found in the guilt of the offender, but on accident, or on the neglect of the man who executes the sentence, whether severe tortures shall constitute part of the punishment. Nor in truth has it always been through accident or negligence that those tortures have been endured. It should seem that in ancient times the sentence was usually executed in all its rigour, it has been so at no very remote period, no further indeed back than the rebellion of 1745: and recourse will probably again be had to these severities if the violence and bitterness of civil dissensions and in-

the chief magistrate, but by subordinate officers in the State, and without the assistance of that best advice which the King can collect. It is true, that they exercise this privilege in the name of the King, in whose name too they administer the law; and if this fiction is to be resorted to, it may be said with as much truth, that the King decides causes, and tries prisoners, as that he exercises his power of suspending the laws.

"The power of suspending the laws by granting pardons, is undoubtedly a prerogative of a very high nature. It is that which, according to Mr. Justice, Blackstone, 'must contribute more than all others to endear the Sovereign to his subjects, and to root in their hearts that filial affection and personal loyalty which is the surest establishment of a Prince.' So happy an effect, however, of this benign attribute of royalty, must be greatly diminished, if not entirely destroyed, by the mode in which, under the present prevailing system, it is exercised. The convicts pardoned so much exceeding in number those against whom the Law is suffered to take its course, and the few who are executed, not the many who are pardoned, appearing to form the exceptions to a ge-

testine wars should ever again unhappily rage in this country, and be attended with the same effect as they have produced in past times and amongst other nations, that of kindling every latent spark of revenge and cruelty existing in the human breast.

neral rule, this prerogative assumes in practice an aspect of severity, not of mercy, and the Crown seems to single out its victims for punishment, not to select the objects to whom it should extend its clemency.

"'But let this power be deposited where it will,' adds Dr. Paley, 'the exercise of it ought to be regarded as a judicial act; as a deliberation to be conducted with the same character of impartiality, with the same exact and diligent attention to the proper merits and circumstances of the case, as that which the Judge upon the bench was expected to maintain and shew in the trial of the prisoner's guilt. The questions, whether the prisoner be guilty, or whether, being guilty, he ought to be executed, are equally questions of public justice. The adjudication of the latter question is as much a function of Magistracy as the trial of the former. The public welfare is interested in both. The conviction of an offender should depend upon nothing but the proof of his guilt; nor the execution of the sentence upon any thing besides the quality and circumstances of his crime.' Nothing can shew in a stronger point of view the defects of the system which Dr. Paley defends, than this single passage. He here imposes upon the Judges duties which it is impossible for them to discharge. If, indeed, he had contented himself with saying, that this suspension of the Law ought never to be a favour

'yielded to solicitation or granted to friendship, or made subservient to the conciliating or gratifying of political attachments,' no person could have disputed his doctrine, though many might have wondered that he had thought it worth while to state what was so obvious; but when he goes on to say, that it must be considered as a judicial act, or as the adjudication of a question of public justice, he really deals with the Judges no less hardly than the Egyptian tyrant did with the children of Israel, when he commanded them to make bricks, but withheld from them the materials with which they were to be made. A judicial act is the application of an existing law to facts which have been judicially proved: but where is the law of which the Judge, in the exercise of this power, is to make the application? Or how can it be said that there has been judicial proof of facts, for which the criminal has never been put upon his trial, which have never been submitted to a Jury, and upon which, consequently, a Jury has come to no decision?

"Of all the duties, indeed, which a Judge has to discharge, the exercise of this discretion must be the most painful. It is true that there are no duties, however awful, no situation, however difficult, with which long habit will not render the best of men familiar; but if we represent to ourselves a Judge newly raised to that eminence, just entering upon the circuit, and become for

the first time the arbiter of the lives of his fellow-creatures, we shall be able to form to ourselves some idea of the difficulties he has to encounter, and of the anxiety which he must necessarily feel. Sworn to administer the Law, he is at the same time the depositary of that royal clemency which is to interrupt its execution. In danger of obstructing the due course of justice on the one hand, or of refusing mercy to those who have a fair claim to it on the other, he finds no rules laid down, or principles established, by the Legislature, to guide his judgment. He must fix for himself the principles and the rules by which he is to act, at the same time that he is to apply them and bring them into action, and yet he cannot but be aware, that the principles which he shall adopt will probably not be those of his successor, who will have maxims of justice and mercy of his own, but which cannot possibly be foreseen; and at the same time he must know that it is nothing but a uniformity of practice which can make the exercise either of severity or of lenity useful to the public. In such a state of embarrassment it is, that he is called upon to decide, and upon his decision the life of an individual depends; nay, upon the decision of a single case may depend the lives of many individuals. The clemency he shews, though it spares the life of a single convict, may be the means of alluring others to the commission of the same crime, who from other Judges

will not meet with the same lenity. The execution of a severe judgment may be the means of procuring impunity to many other criminals, by inducing prosecutors to shrink from their duty, and Jurymen to violate their oaths.

"From the foregoing observations it should seem, that the Laws, which it is proposed to repeal, cannot well be defended as part of a general system of criminal jurisprudence. Taken by themselves, it seems still more difficult to justify them. They are of such inordinate severity, that, as Laws now to be executed, no person would speak in their defence. They have, indeed, by a change of circumstances, become far more severe than they were when originally passed. Not to dwell on the circumstance of their severity having increased just in the proportion that the value of money has diminished, the state of the Criminal Law in other respects, at the time when these Laws were enacted, afforded an excuse for passing them which has long ceased to exist.

"When, in the reign of King William, the benefit of clergy was taken away from the crime of privately stealing, in a shop, goods of the value of five shillings, that offence was already punishable capitally on all but those who could read. The Statute had no other effect, therefore, than to place men, whose crime was aggravated by the education which they had received, upon a level with those who had to urge, in extenuation of

their guilt, the deplorable ignorance in which they had been left by their parents, and by the State.

"The same observation cannot, indeed, be made on the Act of the 12th Anne, which relates to stealing money or goods in a dwelling-house: but when it passed, only seven years had elapsed since the adoption of the Law, which extended the benefit of clergy to the illiterate, as well as to those who could read: and men who had been accustomed to see ignorant persons convicted capitally, for stealing what was of the value only of thirteen pence in any place, or under any circumstances, could not have thought it an act of great severity, to appoint death as a punishment for stealing in a dwelling-house property of the value of forty shillings.

"It is sufficient, however, to say of these Laws, that they are not, and that it is impossible that they should be, executed; and that instead of preventing, they have multiplied crimes, the very crimes they were intended to repress, and others no less alarming to society,—perjury, and the obstructing the administration of justice.

"But although these Laws are not executed, and may be said, therefore, to exist only in theory, they are attended with many most serious practical consequences. Among these, it is not the least important, that they form a kind of standard of cruelty, to justify every harsh and excessive ex-

ercise of authority. Upon all such occasions these unexecuted Laws are appealed to as if they were in daily execution. Complain of the very severe punishments which prevail in the army and the navy, and you are told that the offences which are so chastised, would, by the municipal Law, be punished with death *. When, not long since, a

* In the course of the discussions which have lately taken place on the subject of military punishments, the question which appears to have been principally agitated, is, whether the infliction of corporal pains ought in any case to be admitted into the military code. It should seem, however, that though the nature of such punishments be liable to much objection, it is to the extraordinary severity of them that there is by far the most cause to object. There may possibly be reasons why in some particular cases the lash should still be resorted to, but there surely can be none why it should ever be used to the excess which has prevailed, and, it is to be feared, in some instances, still prevails. We frequently read sentences of Courts Martial ordering 500, 600, 800, nay sometimes 1000 lashes to be inflicted. We know, however, that this is a mass of suffering which God has not given any human creature sufficient strength at any one period to endure. To execute the sentence, therefore, it becomes necessary that the punishment should be portioned out into different lots, and dealt out at distant periods, by certain limited instalments. As much bodily pain as will just bring the sufferer to the brink of the grave, and will there stop, is to be inflicted at one time; and to ensure its stopping there, a medical officer is to be present at the execution to feel his pulse, and to say from time to time how much vital capacity of suffering still remains. The surgeon may be unskilful, he may (for there is no humanity which can very long resist the effect of being frequently the spectator of such scenes), he may be neglectful of

Governor of one of the West India Islands was accused of having ordered that a young woman should be tortured, his Counsel said in his defence, that the woman had been guilty of a theft, and that by the Laws of this country her life would have been forfeited. When, in the framing new

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his duty, and in either case the punishment will become that of death in the most exquisite torments.

It is extremely to be desired that all punishment should be exactly analyzed, and that it should be clearly ascertained what is the nature and quantity of the suffering contained in each, that Legislators and Judges may with certainty know what will be the effect of the sentences which they ordain or pronounce. In making such an analysis of these military sentences, it would be necessary to take into the account not merely the sharp and protracted agonies, which are felt while the punishment is undergone, but the mental anguish which must be endured during the intervals which separate these executions; while the wretched offender lies in the hospital extended on his mattress, reflecting on the past, and looking forward with horror to the future, as he feels his wounds heal only that they may be torn open again by the lash, and his strength renewed only that it may be again exhausted by torments which are to reduce him to the very verge of existence.

It has been represented to be the opinion of the present Judge Advocate, that this mode of parcelling out a punishment into different portions is illegal. If this be so, and if this practice really be not warranted by Law, surely no pains should be spared to make this known, and to undeceive those who may be in an error which must be attended with consequences so deplorable. If such executions are legal, the Law should be altered; and if the Law already condemns them, that Law cannot be too speedily or too industriously promulgated.

Laws, it is proposed to appoint for a very slight transgression a very severe punishment, the argument always urged in support of it is, that actions, not much more criminal, are by the already existing Law punished with death*. So in the exercise of that large discretion which is left to the Judges, the state of the Law affords a justification for severities, which could not otherwise be justified. When, for an offence which is very low in the scale of moral turpitude, the punishment of transportation for life is inflicted, a man who only compared the crime with the punishment, would be struck with its extraordinary severity; but he finds upon inquiry, that all that mass of human suffering which is comprised in the sentence, passes by the names of tenderness and mercy, because death is affixed to the crime by a Law

* The law which punishes with death the offence of privately stealing in a shop property of the value of five shillings, was enacted in the year 1699. Two years after it had passed (in 1701) an anonymous writer published a tract, which has been recently reprinted, to prove that hanging was not a sufficiently severe punishment for murder, burglary, or highway robbery. "If death," he says, "be due to a man who surreptitiously steals the value of five shillings, as it is made by a late Statute, surely he who puts me in fear of my life and breaks the King's peace, and it may be, murders me at last, and burns my house, deserves another sort of censure; and if the one must die, the other should be made to feel himself die:" and the author accordingly proposes breaking upon the wheel and whipping to death as punishments proper to be adopted.

scarcely ever executed, and, as some persons imagine, never intended to be executed.

"For the honour of our national character—for the prevention of crimes—for the maintenance of that respect which is due to the Laws, and to the administration of Justice—and for the sake of preserving the sanctity of Oaths—it is highly expedient that these Statutes should be repealed."

Mr. Windham said, he would not oppose the introduction of the proposed Bills, though he must protest against the attack which had been made by his Learned Friend upon the venerable Dr. Paley; he requested Gentlemen to read the observations of that celebrated Divine, upon the Criminal Law.

The Solicitor-General said, he should view all innovations on established systems with a jealous eye. But because he could not assent to principles which tended to overturn the whole system of the Criminal Law of the Country, and to excite odium and discredit against the Judges and the administration of the Law; he was not, therefore, an enemy to all improvement. He denied that crime was increased by the relaxation of the Law; and contended, that although the greatest punishment against some classes of offences was seldom enforced, yet that the power to inflict it, imposed a salutary terror against the perpetration of crime.

The Chancellor of the Exchequer fully con-

curred in every thing that had been said by the Solicitor-General, but acknowledged that a case had been made out which was so far deserving of consideration, as not to justify any opposition to the introduction of the Bills.

Mr. William Smith vindicated his Hon. and Learned Friend (Sir S. Romilly) from the charge of being misled by wild and visionary schemes of perfection; and contended that he had not advanced a step without facts to warrant his conclusions.

Sir S. Romilly. "As the Motion which I have had the honour to submit to the consideration of the House has not met with any opposition, I should not avail myself of the privilege, to which I am, by courtesy, entitled, of rising to reply, was I not anxious to protect myself from the misrepresentation of my sentiments by my Hon. Friend near me (Mr. Windham), and by an Hon. Gentleman upon the opposite side of the House (the Solicitor-General), who have thought proper to state that I have attacked the celebrated work of Dr. Paley; that I have not been too respectful to the Judges; and who have expressed their alarm that the measures now proposed to the Legislature are part of a plan to overturn the Criminal Law of the Country.

"In discharge of my duty as a Member of this House, I certainly shall never be deterred from freely investigating any opinions which I conceive

to be injurious, although those opinions may be sanctioned by the practice of centuries, or supported by the most venerable authorities. From such obedient unanimity,—from such attempts to destroy all free-spoken truth, I must dissent: but how the Hon. Gentleman can imagine that it was my intention to undervalue Dr. Paley, or that my words have expressed any such intention, it is extremely difficult for me, when I consider the enlightened mind of him who has made this accusation, to discover. I am sure it will be in the recollection of the whole House that I anxiously endeavoured to express the respect which I unfeignedly feel for Dr. Paley; and if my real praise is to have as much value as my supposed censure, I am sure it will not be forgotten, that, I was not more sparing than my Hon. Friend in such praise of Dr. Paley, as it is in my power to bestow. I am not so unmindful of the obligations which society owes to the labours of a life devoted, as Dr. Paley's was, to the duties of his calling, and the advancement of knowledge, as hastily to attack any position which he has maintained. But I am too well aware of the infirmities of our nature to suppose, that such extensive speculations can be free from all mistake: and whatever may be the imagination of the Hon. Gentleman, if he should really conceive, that, when attempting to detect unavoidable errors, I am injuring the reputation of an Author, whose first wish must have been the

advancement of truth, I shall content myself with the conviction, that I cannot better manifest my grateful respect for his memory than by endeavouring to prevent any error from being hallowed by his name. My Hon. Friend must not be supposed to be the only admirer of Dr. Paley: I unite in his praise, and I join also in the entreaty made by my Hon. Friend, that, before the discussion of these Bills, every Gentleman who is interested in the investigation will read the remarks upon Criminal Law made by this so justly celebrated Divine. . . .

"To the next charge I should be totally silent, were I to consider only the probable effect of such an accusation upon the minds of the learned Judges themselves, to whom I am supposed to have been wanting in respect. They will not be misled by such imputations; imputations, of which, from the consciousness of their own virtuous motives, they will have no suspicion; and on which, from their habits of examining evidence before they assent, they will not place any reliance —they would not condemn a stranger upon such a statement. I am proud to say that I have the happiness to be honoured with the friendship of some of the learned Judges; and I am sure they are all too well acquainted with me to imagine that I could for a moment be forgetful of the obligations which we all feel for the faithful discharge of their arduous duties, and for the pure

administration of Justice for which this Country is so eminently distinguished. It is not to remove any impression from their minds that I think it necessary to notice the extraordinary insinuations of my Hon. Friend: but I should wish my Hon. Friend himself to know, that it is not disrespectful to suppose, that unanimity of opinion, upon the most intricate speculations into the motives of human action, is not to be expected from any Judges, however enlightened, and however virtuous, until they are wholly free from all the failings of man's nature.

"Sir, it would be a waste of your time to reason upon the supposition of my Hon. Friend, that an alteration of the Law for a particular species of larceny can be intended to overturn the Criminal Law of England. It is a common, and may be a convenient mode of proceeding, to prevent the progress of improvement, by endeavouring to excite the odium with which all attempts to reform are attended. Upon such expedients it is scarcely necessary for me to say, that I have calculated. If I had consulted only my own immediate interests, my time might have been more profitably employed in the profession in which I am engaged. If I had listened to the dictates of prudence,—if I had been alarmed by such prejudices, I could easily have discovered that the hope to amend the Law is not the disposition most favourable for preferment. I am not unacquainted with the best

road to Attorney-Generalships and Chancellorships: but in that path which my sense of duty dictates to be right I shall proceed; and from this no misunderstanding,—no misrepresentation shall deter me."

Lord George Grenville supported the Motion.

Leave was then given to bring in, 1st, a Bill to amend the Act of William III. as to privately stealing in Shops, Warehouses, &c. to the value of Five Shillings;—2ndly, a Bill to amend the Act of Anne, as to stealing in a Dwelling-house to the value of Forty Shillings;—3dly, a Bill to amend the Act of George II. as to stealing on navigable Rivers, &c. to the value of Forty Shillings*.

*. The following Postscript was annexed by Sir Samuel Romilly to his Observations on the Criminal Law of England.

"No one of the Bills which gave rise to the foregoing Observations passed into a Law. That which proposed to repeal the capital punishment appointed for the crime of stealing in a dwelling-house to the amount of forty shillings, was rejected by the House of Commons, upon the second reading. It was in a very thin House, and the Bill was lost by a Majority of only two, the numbers being thirty-one for it, and against it thirty-three. The Bill to abolish the punishment of Death, for the offence of stealing privately in a shop, goods of the value of five shillings, passed the House of Commons without a division, and almost without opposition; but was thrown out upon the second reading in the Lords by a majority of thirty-one to eleven. Upon the third Bill, that which related to the stealing property of forty shillings value on board vessels, no Vote was ever come to in either House. Though all the Bills had been brought in very early in the Sessions, the consideration of them had been postponed, in the first instance, that ample time might be given for

examining their merits, and afterwards from time to time on account of the unavoidable absence of Members, who were known to disapprove of the Bills, and who it was anxiously wished should have the fullest opportunity of stating their objections. It thus came to be very late in the Sessions, before there was any prospect of bringing the last of them into discussion; and then the great press of other Bills, which to those who are allowed to decide in what order the business before the House shall be taken up, appeared more important, so fully occupied the time and fatigued the attention of the Members, that, after standing for many successive days as an order of the day; it became matter of necessity to defer the measure to a future Sessions.

"Many of the arguments which were urged against them have been anticipated in the preceding Observations. It was not, however, by argument alone that the Bills were opposed; they had to encounter a more formidable opposition in assertions and authority. It was said, that whatever theorists might pretend (for the enemies of the proposed repeal were pleased to consider it as originating only in some fanciful theory), the fact undoubtedly was, that the laws sought to be repealed were extremely efficacious, and that they did prevent to a very great degree the crimes against which they were directed; that although it was true, that these crimes had of late greatly multiplied, they would have multiplied much more, if, instead of death, a less severe punishment had been provided for them, even though the sentence of death were executed in but few instances, and the inferior punishment were never remitted.

"It was not indeed pretended that the individuals on whom the law was supposed so efficaciously to operate, imagined, any more than the rest of the community, that when the law was violated a capital punishment would be inflicted; but the knowledge that it might, the mere possibility of drawing upon their heads so severe a doom, was authoritatively alleged to be of sufficient force to deter them from the commission of crimes. Of this assertion no proof was offered. It was one which might be very safely made: as it rested on no evidence, so was it incapable of being disproved. The authority of those who made it,

might give them the appearance of stating a fact, but in truth they were only advancing an opinion. As an opinion, however, it is open to examination, and it will be extremely difficult to support it upon any principle which has ever been found to govern the actions of mankind.

"The prospect of evil which men know to be possible, but believe to be highly improbable, has seldom much influence in determining their conduct. That human existence is always precarious, is a truth familiar to all men; they know that there is no course of life they can pursue, in which they will not be exposed to fatal accidents, and they rarely, even in the most important determinations, calculate nicely upon the greater or less risk they will run of encountering them. Even where those accidents are presented most prominently to our view, as they depend altogether upon chance, and as there is implanted in the breasts of most men a sanguine belief in their own good fortune, they have little weight in our most important decisions. It is by far other considerations than those of the various modes and forms of death, which the army and the fleet present to the imagination, that men are determined in rejecting or adopting the military profession. No one perhaps ever heard of a man choosing any other vocation in preference to that of a bricklayer or a miner, on account of the frequency of the dreadful accidents to which those trades are exposed. It is well known that great multitudes are seldom collected together, without the happening of some disaster, and generally of such as are fatal to life; and yet how very few are those who have ever been prevented by this experience from incurring such a risk, though it were only for the enjoyment of the most frivolous amusement, or the gratification of the most idle curiosity! If those whom the Law is to influence by its terrors, reason at all on this subject, there is but too much ground for supposing that they view the capital punishment, which is suspended, indeed, over their heads, but which they know will light only on one out of a hundred of those who follow the same courses with themselves, but as one of the many fatal accidents, to which the condition of mortality is constantly exposed, as only another chance added to the long catalogue of

those which intercept human existence, as the appropriate disease, or the peculiar casualty incident to the way of life which they have chosen. The terror of death thus rarely inflicted by the hands of justice, is just as impotent for the reformation of offenders, as are the damps of mines, or the explosion of powder-mills, to deter men from following the trades which expose them to those means of destruction.

"But it was said, that a very recent experience had proved the expediency of the Laws which the Legislature was now called on to abolish. Two years ago, at the suggestion of the framer of the present Bills, an Act was passed to repeal the Statute of Queen Elizabeth, which denounced the punishment of death against the crime of privately stealing from the person to any amount exceeding a shilling. In the short period, it was said, that had elapsed since that law was repealed, the Judges had found that the crime had greatly increased; and what stronger proof, it was asked, could be given of the efficacy of a law, which merely held out the punishment of death as a threat, without ever, or but in very rare instances, inflicting it?

"A stronger proof undoubtedly could not be given of the inexpediency of the proposed repeal, if the fact really were, that the crime had multiplied since the capital punishment was repealed, and that to that repeal this pernicious effect was to be ascribed. But that the crime might have increased, and that such increase might be imputable to quite different causes, could not fail to be obvious to every one who heard the assertion; for it was at the same time alleged, that the crime of stealing privately in shops had also, within the same period, greatly multiplied, and yet with respect to that crime the capital punishment remained in force. Is it not evident, that if the Statute of King William which punishes shop-lifting with death, had been repealed at the same time with the Act of Elizabeth; to that repeal would have been imputed as the undoubted cause, the greater frequency of the crime which it seems has been found to prevail? The judgment which in that case certainly *would have been*, in this possibly *may* be, erroneous.

"But how, let us inquire, does it appear that since the Sta-

tute of Elizabeth was repealed, the crime of picking pockets has increased? The Judges, it is said, have observed it; but the Judges collect the increase of the offence only from the greater number of cases which come before them for trial. To speak correctly, therefore, we should, from the testimony of the Judges, say, that since the repeal, not crimes but prosecutions have increased. The mere increase, however, of prosecutions, far from being an evil, is a great benefit to the public. It is indeed one of those benefits, which the supporters of the repeal ventured to predict would infallibly result from adopting it. The severity of the law, it was said, deters men from prosecuting; and the consequence of so inhuman a punishment being threatened is, that none is suffered. Abolish the capital sentence, inflict a severe punishment, but one less repugnant to all men's notions of justice; and your law will be enforced, prosecutions will necessarily multiply, and punishment will be inflicted where now impunity prevails. What was foretold has happened. The capital punishment has been repealed, and prosecutions have increased; the experiment so far has been completely successful, and yet this very success is converted into an argument against the measure. The mitigation of the law, it is said, has proved an incitement to new offenders; men who would have escaped all punishment, have been imprisoned, or transported for fourteen years, or for life; and this is supposed to have operated as an encouragement to others to follow their example. Surely, if men allowed themselves to examine this matter with the same calm judgment which they apply to other subjects, it would not be possible that things in their nature so incredible, should meet with so ready a belief.

"This, however, is a subject, upon which unfortunately many persons think that we ought not to trust to the guidance of our reason. To alter the Law is to innovate, it is to abolish that which time has consecrated, which the wisdom of our ancestors has established, which may have been established for the wisest reasons, though they are not obvious to every one, and which may produce very good effects, although those effects are not immediately discernible. Whatever force there may be in such considerations, it must, I think, be admitted, that they are less applicable to Cri-

minal Law, than to any other branch of legislation. All penal laws, all laws which inflict suffering and misery on human beings, are in themselves an evil, an evil necessary indeed to prevent one that is of still greater magnitude, but which nothing but the prevention of that greater evil can justify. The good effects therefore of penal laws should be obvious, to justify their adoption or continuance. If they do not prevent crimes, they can be productive of no good; if, instead of preventing, they actually generate offences, and corrupt and harden offenders, it cannot be denied that they are the greatest of evils.

"It is not, therefore, in any case sufficient merely to affirm that a penal law has been long established, to preclude all inquiry into its merits or its effects. The truth however is, as has been already shewn, that the system upon which we now act has no antiquity to recommend it, and that if we would really take those ancestors who are thus praised, for our models, we must make the administration of justice such a scene of butchery, as the sternest of those who exclaim against innovation would themselves be appalled at. The wisdom, if so it is to be called, of our forefathers, led them not to make only, but strictly to execute, these sanguinary laws; not to appoint only, but actually to inflict, the punishment of death with undistinguishing barbarity.

"In fact, there never was any measure which could with less reason be opposed on the ground of a dislike of innovation than this, not only because the present system, being of very modern origin, is itself an innovation, but because the supporters of that system ought, in order to be consistent with themselves, to call for an alteration of our Law, but an alteration of a very different kind from that which has been proposed. Our Penal Laws, upon the principles which govern the execution of them, and according to the reasoning by which they have been defended, are not sufficiently sanguinary, our ancestors have been too sparing in denouncing death as a punishment, and we ought immediately to set about reforming our criminal code, by rendering it still more abhorrent to our natures and regugnant to the character of the times in which we live, and by appointing death with indis-

criminate severity as the penalty of every species of felony. If it be right that it should depend on circumstances quite collateral to the crime, whether a man shall forfeit his life, those circumstances may exist in full as much force in the case of a larceny committed in a shop openly as privately; out of a shop as in it; away from a dwelling-house as within its walls; on board a vessel upon a canal, as in a navigable river. If a man, convicted of stealing what is of the value of five shilllings in a shop, and labouring under a strong suspicion of having committed murder, be a proper subject of capital punishment, is a man tainted with the same suspicion, and who has stolen to the amount of five pounds in the open street, a fit object of mercy? If the suborning witnesses to give false evidence in a case where the offender's life is at stake, be a crime of such deep malignity or dangerous example, as calls for a sentence of death, is the suborning perjured testimony to save himself from a slighter punishment, an offence of inferior immorality? If, as is fondly imagined, the mere terror of a punishment, held out by Law but not inflicted, be sufficient to deter men from the commission of crimes, ought we not to hold out that harmless and salutary terror against felonies of every description, nay, against misdemeanors too, unless it can be said that there are misdemeanors which we ought not to prevent?

"To this length, however, no man perhaps is prepared to go. Even they who most strenuously defend the present system, would probably shrink from acting upon it throughout; they would hardly venture to add to our Penal Code, so many bloody Statutes as their reasoning points out to be indispensably necessary for the public safety. Yet surely in a matter of such importance, no middle course can in reason be taken. Unless our Criminal Code is avowedly to be founded, in its different parts, upon the most inconsistent and discordant principles, we ought either to abolish capital punishments in the instances which have been pointed out, or to appoint them in a great many cases in which they do not now exist. In such an alternative it is confidently hoped, that few men would hesitate which branch to adopt.

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This Postscript was written in the autumn of 1810.—In the following Sessions of Parliament Bills were again brought into the House of Commons to repeal the Acts which make capital the offences of stealing privately in a shop goods of the value of five shillings, and of stealing in a dwelling-house or on board a vessel, in a navigable river to the amount of forty shillings. All these Bills passed the House of Commons, and were all rejected by the Lords. Two other Bills, which were brought into the House of Commons in the same Sessions to repeal the English and Irish Statutes which punished with death the stealing goods from bleaching-grounds, were allowed to pass into laws. In the Sessions of 1812 an Act of Parliament was passed to repeal the Statute of Queen Elizabeth, which made it a capital offence for soldiers or mariners to wander and beg without a pass.

SIR FRANCIS BURDETT.—BREACH OF PRIVILEGE.

Wednesday, March 28, 1810.

THE Question before the House was a Resolution proposed by Mr. Lethbridge, declaring, that *a Letter signed* "FRANCIS BURDETT," *with the further* "ARGUMENT," *in Cobbett's Register of March* 24, 1810, *was a libellous and scandalous Paper, reflecting on the just Privileges of the House of Commons.*—On this it was moved as an Amendment by Mr. Brand, that, *the Debate should be adjourned till the next day se'nnight.*—Sir Samuel Romilly supported the Amendment

proposed by his Hon. Friend (Mr. Brand). The Case before the House was one, which ought to be decided on with temper and deliberation. This might be expected not only from a sense of justice towards the individual interested, but even out of the respect due by the House to its own character. "Though we may be obliged (he said) to sit here as Judges, on the present occasion, let us not forget that we are judges in our own cause. In such a situation, it is more peculiarly necessary for us to see, that nothing personal, nothing vindictive, nothing of prejudice or passion, be allowed to mingle itself with our deliberations. Instead of anxiously catching at every supposed or apparent violation of our Privileges, it would better become our character, as an House of Commons, to protect them with temper and moderation, and without overstepping the liberal and substantial rules of justice.

"With all the pains which I have been able to bestow during the short period which has been allowed us for considering the Publication in question, I should feel very great hesitation in declaring it to be a Libel: and if I am compelled to come to a Vote on the subject this night, I must, on every principle of Law and Justice as recognized by the Courts in which I have been educated, say, that it is *not* a Libel; because, so long as there exists any doubt, I must, of necessity, incline to the side of Innocence. Let me

again, therefore, entreat Gentlemen to come to the decision of the question before them with more temper and moderation, and without indulging that spirit of exaggeration and retort which has unfortunately characterized this discussion. There is no man more anxious than I am to repel every attack on the just Privileges of this House. So far, however, from protecting them, I fear that the tendency of the proposed Resolutions is to bring our Privileges into contempt, and that we are involving ourselves in a contest, where success will be without glory, and defeat without consolation. But we are told that the House is not to listen to the language of intimidation. For my own part, I must confess that I have not courage, considering what has lately passed at so many meetings throughout the country (where opinions, in many instances unanimous ones, on grand public questions, have been held contrary to the decisions of this House), to contend that the Majority here must be correct, and the great body of the Nation wrong; or to set up my own opinion, even if I had originally formed one of those Majorities, against the declared sense of the People. *(Hear! hear!)*

"Sir, I much fear that the House is now proceeding to dispose of a question, with the true nature and real bearings of which it has not made itself acquainted. Indeed, I think that I shall be able to satisfy some Gentlemen who seem most

anxious to come to an immediate determination, that this is the case, and that if they at this moment decide on the facts as they now understand them, they will decide contrary to the true import and meaning of the very passages on which their decision is founded. An Hon. Gentleman under the gallery (Mr. Owen) has cited, as the ground of his opinion, a particular paragraph from the Argument in question, and without weighing its import, after a cursory reading, has at once pronounced it to be a gross Libel upon the House of Commons. The passage to which I allude is that which has been represented by him as charging this House with having converted the Bill of Rights into a Bill of Wrongs! Had the Hon. Member perused the passage more attentively, he would have found that it only related to Mr. Yorke's interpretation of the Bill of Rights, and that it expressly exempts every other Member of the House from the imputation of having concurred in Mr. Jones's imprisonment under the pretext of any such authority. *(Hear! hear!)* If the House however had agreed with the Hon. Member under the gallery in his construction of the passage, it must have taken for granted, that the interpretation put on the Bill of Rights by Mr. Yorke, had been ascribed by Sir Francis Burdett to the whole House. This would be a strange and extravagant construction of the paragraph in question, as the Hon. Gentleman must himself admit

when he shall have again perused it. Seeing then the egregious error into which his precipitancy has led him, he will agree with me that the consideration of the question should be postponed. As a Lawyer, he will see, and I am convinced will deplore, the possible effects of his rash and inconsiderate judgment.

"The Resolution which the House has been called on to support, states, that the Publication in question is a *Libel*, and a Breach of the Privileges of the House. Without pretending to assert that it is not a Libel; I must still confess that I entertain very serious doubts on the subject,—doubts which have been rather strengthened than allayed by all I have heard this night. To decide whether this Paper is or is not a Libel, it must be judged from the whole of the context, and not from particular passages selected with invidious industry. *(Hear! hear!)* A Publication may be a Libel either in its matter or in its manner. Any man has a right to discuss great constitutional questions, whether of original power, or of constituted authority. He may shew his folly perhaps, in arguing a point in which no other man would concur with him, but he has still a right to do so. With regard to the Paper in question, it may contain very strong and unguarded language; but at the same time it must be acknowledged to have been written with great ability. Every precedent,—every high authority

on the subject has been given and argued on with much learning and ingenuity. It is a grave argument; and God forbid that any man should be precluded from discussing such matters! The question is not, whether the Paper before the House may contain offensive paragraphs, but whether such paragraphs amount to a Libel? [*A sort of laugh from the Ministerial Bench.*] There are, without doubt, Gentlemen on the other side of the House, who are much more intimately acquainted with the nature of Libel than I can pretend to be, and who will be prepared to answer this question. The Paper says, that the power assumed by the House of Commons is in violation of Magna Charta; and Gentlemen object to the warmth of the language which the Hon. Baronet has employed in maintaining his position. Why should there not be strong language in arguing a question of such deep importance, involving at the same time the Rights of the People, and the Constitution of the Country? Is the House called on to interfere, and to measure out the nature and the quality of the language to be used in every such discussion? Is it on such nice and doubtful matters that the House should be called on to judge? There may be, as I have already said, offensive paragraphs in the Publication; but I can by no means view them in the mischievous and dark light, in which some Gentlemen have been induced to contemplate them. The passage in

which the House is stated to have 'assumed the Sword of Prerogative, and to lord it equally over the King and the People,' seems to have excited particular indignation. Now, where is its mischief? What are the dangers or pernicious consequences which can possibly result from such an assertion? To me (though the Hon. Baronet may perhaps take offence at such an observation)—to me the paragraph appears to be altogether nonsense. Where has this House encroached upon the Prerogatives of the Crown? Whatever may be the opinion entertained of its conduct in matters relating to the Rights of the People, who will pretend that it has been ever wanting in deference to the wishes of the Sovereign? *(Hear! hear!)* This, at least, is a reproach which the House has not yet incurred by any of its actions! There are other passages which have been dwelt upon as containing matter equally objectionable; such as an allusion to '*the manner in which this House is constituted*,' and the declaration, that its members are '*collected together by means which it is not necessary to describe*.' Now, let me ask the Gentlemen opposite, as learned Lawyers, to shew, if the Hon. Baronet was to be indicted for these objectionable paragraphs, how the charge would be laid? Where is the Innuendo? I perfectly recollect a case of this kind, in which a Learned Gentleman on the other side was for the prosecution, and

which was dismissed because it was deficient in this very particular.

"But there is another matter to which I am most anxious to direct the attention of the House. We are called on to vote this Paper a Libel, without having heard its Author in his defence! This may be the law of the House of Commons, but it is not the law of any other Court in this realm. *There*, when a man is indicted for Libel, after its supposed nature and tendency have been set forth by the Counsel for the prosecution, the Defendant has an opportunity of being heard in vindication of his innocence, or in palliation of his errors; he may controvert the offensive construction which has been put upon his publication, and may point out to the Jury the real meaning which he intended it to bear. *(Hear! hear!)—Here*, the individual accused has no such opportunity. The Paper is read; its Author is ordered to withdraw without being heard, and judgment is then passed upon him! *(Hear! hear!)* This may be the law of Parliament. I do not affect to be so well versed in its usages as in those of the Courts in which I have been accustomed to practise. I am not even contending, at the present moment, that this is not the regular and necessary mode of Parliamentary Proceeding; but if this be the only course, which can with consistency be pursued let us at least,—more especially as we are ourselves a party in the cause,—let us, at least, act with be-

coming calmness and deliberation. If we cannot call the Hon. Baronet before us, to hear his explanation of the obnoxious paragraphs with which he is charged, it is doubly incumbent upon us to see that he suffers no injustice from the prejudices of error or passion. *(Hear! hear!)* It was yesterday admitted, that, time ought to be given for deliberation. What has been done since, or what time has intervened, to enable us to become masters of the subject? Will Gentlemen venture to say that any of the passages which have been objected to, may not, on further and more dispassionate consideration, admit of a very different interpretation from what they have now received? I have already shewn, in the case of the Learned Gentleman under the gallery (Mr. Owen), that there were persons ready to decide on the Paper in question, and to vote it a Libel, though labouring under a complete misapprehension as to the meaning of the very passages on which their opinion had been founded! *This* alone I might submit as a sufficient ground for postponing the determination of the present question. It is impossible to say that a fair opportunity has already been afforded us for considering it. The evil consequences of precipitancy must be obvious to all; and notwithstanding the confidence with which so many Gentlemen on the other side have delivered their opinions, I trust, that the House, out of respect to its own character, will take some little

time to deliberate before it finally decides on a case of so much importance." *(Hear! hear! hear!)*

The Debate was adjourned until Thursday, April 5.

PRIVILEGE OF PARLIAMENT.

April 5, 1810.

The Order of the Day for resuming the adjourned Debate on the Resolutions of Mr. Lethbridge, having been moved, the doctrines of Sir Francis Burdett, respecting the right of Commitment as claimed by the House of Commons, in cases of Libel, were strongly impugned by Sir John Anstruther and Lord Binning, and as strongly vindicated by Lords Ossulston and Folkstone. The latter concluded by moving, that the House should proceed to the other Orders of the Day. Sir Samuel Romilly then rose to deliver his sentiments, and spoke in substance as follows:

"Sir, when this question was last under our consideration, I felt it to be my duty to impress upon the House, the necessity of allowing time for the fullest deliberation on so important a subject.

Since that period I have given it all the attention within my power; yet, after all the consideration that I have bestowed upon it, I do not hesitate to say, that although I had been (as it was stated by the Gentlemen opposite on a former night) the only person who entertained doubts, of those doubts I should not be ashamed. *(Hear! hear!)* I have now to congratulate the House upon the disposition which is manifested, to meet the discussion with the temper and deliberation suited to its importance. I have to congratulate the House upon the change that has taken place in its tone and feelings upon this question. We no longer hear of carrying it with acclamation. There is happily a cessation to those warm, indignant, and intemperate emotions, under the influence of which, many were disposed on the former occasion to precipitate the decision. The result of such a satisfactory change must be, that even though the decision to which the House will now come, should be the same as that which would have been pronounced upon the former night, still that decision will be made, in a manner much more creditable to the House, as well as more calculated to acquire that respect from the people, which, upon every principle, is always to be desired.

"Sir, the proposition now before the House, involves two questions; 1st, Whether the publication is a Libel reflecting on the Privileges of the

House? and, 2dly, Whether it is expedient to acquiesce in the proposed Resolutions?—For my own part I am free to admit, that I still entertain doubts, whether this paper is either a Libel, or a breach of the Privileges of the House. In order to consider the question fairly, we must revert to the circumstances in which it originated. Such a course is absolutely necessary before we can pronounce against the present publication. The Hon. Baronet, who is the author of it, had complained of a proceeding of this House, against one of his fellow-subjects, as, in his opinion, highly illegal. Another Hon. Member, indignant at such complaint, has submitted certain Resolutions, declaring the conduct of the Hon. Baronet a gross and scandalous offence. The House, therefore, before it can pronounce upon the present paper, must be aware that it would be guilty of a strange departure from justice, if it did so without considering the nature of the preceding case, namely, its right to commit Mr. Jones. Whatever impression, therefore, some observations in the publication of the Hon. Baronet may probably have made, if the main view of the original question, — that is, the imprisonment of Mr. Jones,—he (Sir Francis) shall turn out to be right, surely such a conclusion must have the effect of mitigating, if not of removing altogether, the impropriety of any strong or offensive expressions into which, in arguing so serious a subject, the Hon. Baronet may have fallen. *(Hear! hear!)*

"Upon the original question,—namely, the power of this House to commit for Libels, reflecting upon its proceedings,—I will candidly state the doubts which I entertain, of the legality of its exercise. Perhaps it may be a more appropriate expression to say, that I doubt of its justifiableness,—the term illegal not being properly applicable to a body, which is not under the control of any superior jurisdiction. Whatever, therefore, are its acts—in whatever way it may interpret its Privileges,—even though it proceed in error, that error can alone be remedied in this House. The very extent of such a power should, of itself, advise the most scrupulous forbearance in carrying into practice privileges not only unnecessary, but dependent upon very dubious grounds for support. With respect to the right of committing for a Libel, therefore, it would ill become me, knowing that the House has so lately decided differently, to give my opinion without some diffidence. Had not that case been so prominently before me, I would not limit my expressions to the term doubt, but should at once say, that I consider the commitment for a Libel reflecting upon the past proceedings of this House, to be unjustifiable. Entertaining these opinions, and recollecting that there is at present a person suffering under the exercise of this disputed right, I think it my duty to review the merits of that individual's case.

" The warrant under which Mr. Jones was committed, sets forth two offences: first, a scandalous and libellous attack upon the conduct and character of this House; and, secondly, a similar offence against the character and conduct of some particular Members. With respect to the first head of offence, although I have looked with the most inquisitive attention into the publication for which Mr. Jones was committed; I must contend, that there is not a single expression in that paper reflecting upon the conduct and character of this House. It certainly complains of the conduct of two of its Members; and in making them the subject of a discussion in a Debating Society,—putting them on their trial before persons who had paid their shilling for admission, and subjecting them to be arraigned by those who gratuitously display their eloquence in the accusation of such characters, was very reprehensible; but still it cannot be construed into a Libel against the character of this House. For what were the words of Mr. Jones's publication?

'WINDHAM AND YORKE.

British Forum, 33, Bedford Street, Covent Garden, Monday, Feb. 19, 1810.

Question:—'Which was the greatest outrage upon the public feeling, Mr. Yorke's enforcement of the Standing Order, to exclude strangers from the House of Commons, or Mr. Windham's recent attack upon the liberty of the Press?'

"The *gravamen* of the complaint is for enforcing the Standing Order for the exclusion of strangers. Such enforcement was the act of the individual Member, and not of the House. *(Murmurs from the Ministerial benches.)* From the manner of the Gentlemen opposite, I perceive that they do not concur with me in this inference. I am convinced, however, that my observation is justified by the understood practice of the House. —I am fortified in this opinion by the authority of the Chair, when on a recent occasion (the discussion of the Bye Law of Lincoln's Inn), it was communicated to a Right Hon. Friend of mine (Mr. Windham), that the propriety of enforcing the Standing Order could not become a question of debate. *(Hear! hear!)* The only point in which the House concurs, is on the first day of the Session, when it agrees to the Standing Order. From that moment it becomes the entire and sole act of the individual Member, who puts it in force, and who would still be enabled to do so, though every other Member in the House should question its propriety. But the succeeding paragraph of the paper fully proves, that, in the contemplation of the author, the censure expressed did by no means apply to the House, but only to the individual Member. The paragraph is as follows:—

'Last Monday, after an interesting discussion, it was unanimously decided, that the enforcement of the Standing Order, by shutting out strangers from the gallery of the House of Commons, ought to be censured as an insidious and ill-timed attack upon the liberty of the press, as tending to aggravate the discontents of the people, and to render their representatives objects of jealous suspicion.'

"Observe, then, how carefully, and in what a jealous manner, the opinion which the sentence goes to convey, is expressed. *(Hear! hear! from the Ministerial Benches.)* Why is it so guarded? only to prove that its censure is directed against the individual, and is not at all intended to affect the character or conduct of this House. Neither is the censure levelled at the Standing Order itself. No such intention can be supposed. The attack is made upon its enforcement at that most particular moment when the public mind was vigilantly directed to the proceedings of Parliament; and as that enforcement was the act of a single individual, I do not see how the reprobation of it can possibly be construed into a Libel on the character of the House, unless the character of the whole body is henceforth to be held identified and committed with the conduct and character of each of its individual Members. But though such is my sincere conviction upon this part of the case, I trust that no person will consider me as in any degree justifying the nature of the attack which

has been made upon the two Hon. Members (Messrs. Yorke and Windham). I will go further, and state my opinion, that such a publication may amount to a Libel against the individuals mentioned, inasmuch as it imputes by innuendo very improper motives to their conduct.—But, then, in reverting to the Warrant under which Mr. Jones is confined, it will be found that though one branch of his offence is stated to consist in having libelled the character and conduct of particular Members, still it is not specified that the Libel in any way referred to the conduct pursued by them within this House.

"With respect to the remedy,—I cannot perceive that the case of Mr. Crosby*, which has been cited by an Hon. Baronet, controls the present. The decision there was on principles wholly inapplicable to the case of Mr. Jones.—Mr. Crosby was a Member of this House, and having been committed by its authority, the Court of Common Pleas refused to discharge him, on the ground, that he appeared to have been duly committed by the authority of the Speaker's Warrant for a breach of the Privileges of this House, to which he, as one of its Members, was always amenable. But supposing any thing had been stated in the Speaker's Warrant as a breach of Privilege, which appeared to the Court to be no

* 2 Black. 754—and 3 Wils. 188.

breach of Privilege, is it not reasonable to presume that he might have been relieved by *Habeas Corpus?*—Suppose, for instance, that a man was to be committed by the House of Commons for saying that Bank Notes have depreciated in value, and that such an offence was set out in the Warrant as a breach of Privilege; will it be maintained that the individual so committed is not entitled to his discharge by *Habeas Corpus?* Indeed, from every view which I have taken of the question, I cannot restrict myself to saying, that I merely doubt; but must avow that I entertain very strong doubts of the power of this House to commit for Libels affecting its past proceedings. *(Hear! hear!)* At the same time, I fully admit, that such a right is possessed by it, in order to punish all breaches of Privilege which go to obstruct any of its Members in the performance of their many sacred and important duties. But such obstructions must not operate in an indirect way, they must at once tend to produce that with which they are charged. There are numerous cases where the authority of the House would be altogether debarred, unless it had the power to prevent these direct impediments to the exercise of its duties. Such are the refusals of witnesses to attend, or to answer interrogatories; such are all attempts to intimidate Members in the votes they shall give. Unless the House had, in such cases,

the power of proceeding by the summary way of Commitment, there would be an end of its functions,—there could be no unbiassed decision by its Members.

But the power of Commitment for censuring is far different in its nature and consequences. It is in contradiction to the most sacred and important principles of positive Law. It confounds in the same tribunal the discordant characters of party—accuser and Judge. *(Hear! hear!)* It deprives the accused of that which every legal jurisdiction secures to him,—the power of being heard in his own defence! It goes to decide upon the conduct of the accused in his absence, and without suffering him to state his own construction of the obnoxious Publication! And what, in the mean time, is the conduct of his Judges? They are, in all probability, engaged in putting some aggravated interpretation upon his meaning!—He who must best know what was intended, is refused to be heard, while those, who are ignorant alike of his motives and his meaning, are allowed to substitute their own strained, and perhaps partial construction. *(Hear! hear!)* Is there, I will ask, one Judge in the Courts below, who would deny to any individual thus situated, the right of being heard in his own defence, or, in the denial of such a right, would venture to adopt his own arbitrary construction of the conduct of the accused? Let the House pause,—

and reflect upon the course it is now pursuing!—Let it recollect, that it is proceeding against the Hon. Baronet, without having examined a single witness,—without the power of examining upon oath, as Judges of the law and of the fact, and without that power of appeal being allowed, which the accused in all the ordinary Courts of Justice possess.

"But even admitting that in very extraordinary cases this power should be vested in the House of Commons, still I would contend that where the necessity ceases, there also the privilege ceases. In the case of Alderman Crosby, what was the language of Chief Justice De Grey? He argued, that such a power was legal, because it was necessary. Am I not then strictly justified in assuming the converse of that proposition? may I not argue, that when it is not necessary, it is not legal?—And where is the necessity,—where even the policy of carrying into practice a disputed privilege, for an alleged offence, cognizable in the Courts of Law? A Right Hon. Gentleman, on the former night of this discussion, stated, that the powers of this House are not to be circumscribed by the exact and artificial rules of evidence, observed in Courts of subordinate jurisdiction. The rules by which I conceive that the House is bound to regulate its decisions, are comprehended within no such definition. They

are rules above us, and above all Courts whatsoever; rules by which, from the fallibility of human nature, all its tribunals should be governed.—The Being that has the power to dispense with them is far above us, uninfluenced by the prejudices of human passions, or the wanderings of human reason.

"It has been often repeated by the Gentlemen opposite, that for the exercise of this privilege, the precedents upon our Journals are innumerable. I should be glad to know where they are to be found, in order to ascertain the analogy. The first precedent on which the Chancellor of the Exchequer has endeavoured to support this privilege of committing for Libels upon past proceedings, is the case of Arthur Hall, which took place in 1580 *. It is indeed rather extraordinary to refer to such a period for precedents, and not less, to fix upon that particular case. I should have thought that the reigns of the Tudors were not the times best calculated to illustrate the sacred security in which our ancestors held the privileges of Parliament and the Liberties of the People. I should have supposed, that those, at least, who are now so tenacious of the privileges of this House, would be slow in referring to the reign of a Monarch who told the Parliament

* 1 Hatsell, 93.

not to trouble itself with matters of State, and who upon another occasion despatched a messenger to this House, commanding it not to proceed further in a public transaction, in which it was engaged.

" But reverting to the case of Hall, what was the sentence of the House? Was it any thing like the Commitments of the present day? No: the sentence was for six months' imprisonment, to pay a fine of five hundred marks, and to be still further imprisoned until he should make his *retractation* in the presence of the Lord Steward of Her Majesty's Household, the Chancellor of the Exchequer, and other great Officers of State. If the individual was obstinate and refused to retract, he might be imprisoned for life! This was the mode of proceeding cited to the House as an authority to justify its conduct on the present occasion. Is the House prepared to act upon it? Is it prepared to commit for a definite period,—to fine,—to demand retractations suited to the taste of His Majesty's Ministers, under pain of continued and unlimited imprisonment? Yet, if the precedent of the Right Hon. Gentleman is good for any thing,—if it is to be considered as a sanction for exercising the power of Commitment, why may it not be extended to the infliction of pecuniary penalties,—of retractation, or perpetual imprisonment? *(Hear! hear!)* If cases are wanted by Gentlemen who

support these Resolutions, I can refer them to many. I might refer them to cases in which this House has sentenced offenders against its privileges to the most extraordinary punishments,—to hard labour in gaols,—to imprisonment for life,—and in one instance, where it ordered two men to be placed back to back on the same horse, and to be thus exhibited to the derision and contempt of their fellow-citizens! But are these cases such as ought to be cited as *precedents* on the present occasion? Or is there any analogy between the breaches of Privilege thus punished and the case of Libel now before the House? With respect to the case of Arthur Hall, Mr. Hatsell tells us that it was afterwards declared by this House to be derogatory to its proceedings; and there is the same authority for stating, that from that period until the time of the Long Parliament (an interval of sixty years), this privilege against Libel was not again called into practice. And are *these* cases to be acted upon? Are they any thing like *precedents* in the legal signification of the term? No: it is an abuse of language to call them such. They are the mere arbitrary exertions of authority,—the momentary ebullitions of passion; not the solemn decisions of a judicial Tribunal upon cases fully argued and deeply considered. *(Hear! hear!)* I know very well that in the year 1659, in the struggles between this House and the

House of Lords, Resolutions of a strong nature were adopted by the former. It was then

'Resolved, that to print or publish any Books or Libels reflecting upon the proceedings of the House of Commons, or of any Member thereof, for or relating to his service therein, is a high violation of the Rights and Privileges of the House of Commons.'

"But the Resolutions of this House are not Laws. *They* can invest us with no authority to invade the liberty of the subject.

"I have already alluded to the case of Crosby*, and endeavoured to shew that it is no authority for the guidance of the House on the present question. It was not a case of Libel, and therefore decides nothing in favour of the Privilege now claimed on the part of the House of Commons. The Judges indeed refused to interfere, because they were ignorant of Parliamentary Privileges,—those Privileges which have been described by Sir Edward Coke, as looked after by so many, but found by none. They also held that the Commitments by one Court were not cognizable by any other. But this doctrine is contrary to many of the best precedents, and particularly to the principles laid down in the case of Bushell, by the high and constitutional authority of Chief Justice Vaughan†.

"With respect to the case of Flower‡, the

* 2 Black. 754; and 3 Wils. 188.

† 1 Freem. 1; and Vaugh. 135. ‡ 8 T. R. 314.

Editor of the Cambridge Newspaper, he was both fined and imprisoned by the House of Lords, and not for a Libel on that Body, but on one of its Members (the Bishop of Llandaff). From the time of Prynne down to that period, the question, though often agitated, had never been fairly decided; and some time before that Commitment, Mr. Hargrave, allowed to be one of the most profound and constitutional Lawyers in this Country, had published a very learned argument, in which he strongly doubted the right*. But admitting

* See Hargrave's Juridical Arguments, vol. i. p. 1; and vol. ii. p. 183. In his first argument on the case the Hon. S. Butler and Mr. O. Bond, who had been committed for a contempt by the Irish House of Lords, Mr. Hargrave says,

"I am far from being convinced, that Commitments for contempts, by a House of Parliament, or by the highest Court of Judicature in Westminster Hall, either ought to be, or are, wholly privileged from all examination and appeal. It will appear from the Aylesbury case, that in thus hesitating about such wide and unqualified doctrine as imprisonments for contempts, I not only have the decided opinion of that great Lawyer Lord Chief Justice Holt to countenance me; but am justified by the solemn Resolution of our House of Lords against the proceedings of the Commons on the *Habeas Corpus* remedy in the very same case, unless that Resolution shall be so construed as to extract from it all its spirit and significance. Besides, I can imagine cases so strong, that, should they occur, it would put such doctrine to a severe test. Suppose, that for a breach of privilege, or contempt, our House of Lords should sentence a person to work in Bridewell for his life, as was actually done by the Lords 1624; that this breach of Privilege should be suing a writ of *Habeas Corpus* to examine the legality of a former Commitment by the Lords; and that so extraordinary a case should fully appear on the return of a *Habeas*

the legality of that case, is any one prepared to say that it is an analogous Precedent for the

Corpus in the King's Bench. Upon such a case, more especially if Parliament was not sitting, would not the Court reconsider this doctrine of the unappealable and unexaminable nature of Commitment for contempts?

"Suppose again, that a rash Lord Chancellor, provoked by insolent and threatening language addressed to him in his office, or by the contumacious and insolent disobedience of a just order of the Court of Chancery, should in the moment of passion so far forget himself and the limits of his power of punishment for contempts, as to commit the offender to the Fleet prison for his life, or to be whipped and pilloried, with imprisonment for ten or twenty years; would all the Courts of Common Law in Westminster Hall, when the return to a *Habeas Corpus* brought such a case before them, instantly say to the prisoner, 'We are bound by the authorities to shut our eyes to the apparent illegality of the sentence and imprisonment; and gross as we must confess the case to be, it is irretrievable.' These are very strong cases to put. Even stronger cases are possible, and in argument one hath a right to put the strongest. But those I put are sufficient to exhibit the extreme latitude of the doctrine I thus venture upon examining, and to render assent and acquiescence at least difficult. If, too, the doctrine of Contempts be thus wide; if the House of Lords or Commons, or the Court of Chancery, or any of the Great Courts of Westminster Hall, may construe what they please into Contempts, and may, under that denomination, without Trial by Jury, convict all persons of crime, and have also an indefinite power of punishing by fine and imprisonment; and if all this, when done, be thus unappealable, and thus unexaminable, what is there but their own wisdom and moderation, and the danger of abusing so arbitrary a power, to prevent the House of Lords, or the House of Commons, or any Court of Westminster Hall, under shelter of the Law of Contempts, from practising all the monstrous tyranny, which at first disgraced, and at length overwhelmed the Star Chamber?" Vol. i. p. 15, 16.

House of Commons on the present occasion? Will it be contended that *this* House possesses the right to fine as well as to imprison? *(Hear! hear!)* A Right Hon. Gentleman, the Chancellor of the Exchequer, has adverted to the opinions expressed by Lord Kenyon, in answer to the application, which was made to the Court of King's Bench, in behalf of Flower, for a *Habeas Corpus*. That Noble Lord did then think proper to observe, that if ever the time should come that any malignant, any factious, any bad man, should wish to overturn the Constitution of the Country, the first step he would take, he dared say, would be by attacking the Courts of Justice, and the Privileges of both Houses of Parliament. *(Loud cries of Hear! hear! from the Ministerial Benches.)* Will the Hon. Gentlemen continue their cheering when they reflect that the Noble Judge thought proper to introduce these observations upon the case of a man committed, not for an attack upon the Privileges of any Court of Justice, or of either House of Parliament, but for a Libel upon an individual? Indeed, whoever reviews the language employed by the Noble Lord on that occasion, will see in it any thing but the calm, deliberate, sober determination of a Learned Judge, sitting in judgment upon the personal liberty of a subject! But when the following observation, with which he concluded, is fully considered, it will be impossible that such a precedent can have

weight with any unprejudiced tribunal. 'Having heard the case argued, I am of opinion that the party must be remanded, beyond all doubt, unless we wish to overset all the law of Parliament;—unless we choose to lend our hand to do that most sacrilegious act, to endeavour to overthrow the Constitution of the Country, this person must be remanded.' This is not the language of a Judge; it deserves only to be considered as the opinion of a member of that Body, whose commitment was complained of. Indeed, there was only one other Judge present in Court with the Chief Justice when the case was argued, Mr. Justice Lawrence having been kept away by indisposition, and Mr. Justice Le Blanc being engaged at *Nisi Prius* in Guildhall. Such is the case of Flower, to which some Gentlemen seem to attach so much importance. *(Hear! hear!)*

"But if every thing like censure on the past proceedings of this House is to be treated as a breach of Privilege, what will become of the control of public opinion? Or is it now, forsooth, to be contended, that this House ought to be above its influence? *(Hear! hear!)* Acknowledging, as I do, the advantages, and even the necessity of such an influence, I shall ever consider myself bound to resist any measure that has a tendency to destroy it. There are Tribunals in this Country fully competent to every purpose of public order; Tribunals, where those who pro-

nounce the verdict are neither parties nor accusers! To them, if the expression of popular and constitutional jealousy has chanced to wander into Libel,—to the ordinary Tribunals of Law let us leave the punishment of the offence. So impressed am I with the purity of this doctrine, that I feel it to be my duty, at no distant day, to move for the liberation of Mr. Jones, without those concessions which have been usually exacted on such occasions. I know not, whether what is alleged to be the custom of the House has been ever dispensed with; but it is a custom that will be 'more honoured in the breach than in the observance.' There is no other Civil Tribunal in the Land which requires a man to abjure his opinions. Though utterly false and erroneous, they may be still sincere. They may have been delivered on the firmest and most honest conviction. And is it to be supposed that the mere authority of the House of Commons can change these opinions; or if remaining unchanged, is it just that their Author should be called upon to retract them? *(Hear! hear!)* In the Spiritual Courts, I know that a different course has been frequently pursued; and that in prosecutions for heresy, offenders have been compelled publicly to recant doctrines which they had perhaps promulgated from the purest conviction. But it is not the practice of Civil Courts to oblige a man to take part in his own humiliation and punishment.

"In reverting, however, to the question more immediately before the House,—namely, to the paper complained of,—I am bound to declare, that I think its author right in his main proposition, —and holding that opinion, however intemperate he may possibly have been in some of his expressions, I cannot agree that he is at all deserving of censure. There are, indeed, some passages in the Publication, which I do not well understand, but I cannot go the length of a Noble Lord (Binning) in believing that they must therefore mean evil. *(Hear! hear!)* The warmth which runs through the paper is no proof of its being written in contempt of the House. On the contrary, I conceive, that a certain vehemence in the expression of an opinion is rather a proof of its sincerity, and of the importance which its author attaches to it. The Hon. Baronet believes that an injustice has been committed by the imprisonment of a British subject. Can it be expected that he should speak of such an act with perfect calmness and unconcern? Is this the general practice of mankind on such occasions? There is a case, which if it had been that of an individual, might be cited in way of *argumentum ad hominem*. In the case of the Aylesbury Election, the House of Commons held much more violent language against the House of Lords than what is now complained of, in the Publication of the Hon. Baronet. In a paper drawn up by a Com-

mittee of this House,—agreed to by the House itself, and sent up to the Lords,—are the following passages. 'It was not to be wondered that after the success their Lordships had had in their great advances upon the constitution, they should now at once make an attempt upon the whole frame of it.'—The Resolutions then accuse the Lords of acting 'under the specious *pretence* of preserving liberty,'—and add, that 'the Commons could not but see how their Lordships were contriving by all methods to bring the determination of liberty and property into the bottomless and insatiable gulf of their own judicature, which would swallow up both the prerogatives of the Crown and the rights and liberties of the People; which their Lordships must give the Commons leave to say, they had the greater reason to dread, when they considered in what manner that judicature had been exercised; the instances whereof they forbore, because they hoped their Lordships would reform;'—and, again, that 'their Lordships had assumed and exercised judicature contrary to the known laws and customs of Parliament, and tending to the overthrow of the rights and liberties of the people of England *.'—Is there any thing in the publication now complained of to equal the violence of this language? If a private individual had made use of such expres-

* Parl. Hist. vol. iv. p. 401.

sions, it might have been justly said, that it was not for him to be forward in complaining of intemperate language! *(Hear! hear!)*

"And here I cannot refrain from adverting to the invidious allusions which have been made to the past conduct of Sir Francis Burdett. In a Court of Law (where he might have been *present* to defend himself) such references would not have been allowed, and, if persevered in, would have been deservedly treated as a high contempt and obstruction of justice. The Hon. Baronet is to me a total stranger, except as I have observed his public conduct; it cannot, therefore, be supposed, that I am influenced in these observations, by any other consideration than a sense of duty, and a regard to the sacred principles of Justice.

"It has been said by an Hon. and Learned Judge (the Master of the Rolls), that the present question has been forced upon the House. This would have been correct, if it had referred to any of the Courts below. They must decide when their opinion is called for. Their rule is, *Fiat justitia.* They must pronounce, whatever may be their fears of the consequences. But this House is under no such obligation. It is not bound to decide because an individual reading a publication, in the morning, which may contain in his opinion some objectionable passage, chooses in the evening to bring it before the House of Commons. For my own part, I lament that the pre-

sent case should have been brought forward,—and I cannot but think that it would still be politic to avoid any further proceeding, even if by a severe interpretation the paper could be construed into a breach of privilege. In matters of religion, the rigour which formerly prevailed, instead of abating heresy, served only to inflame the zeal and increase the number of its disciples. May not similar consequences result from a similar cause, on the present occasion? The committal of Mr. Jones has been so far from putting a stop to attacks upon this House, that it is the very cause and occasion of the question now under discussion. Is it not, therefore, worth our consideration, whether this mode of punishment is likely to be productive of good or evil? Whether the decision in the present, as in the preceding case, may not lead to as great or greater violations of Privilege, and whether the House by any exercise of its power of committal can possibly repress all offensive comments on its past proceedings?

"This is no time for agitating questions of this nature. This is not a moment for the House to provoke discussions, respecting its authority. Differing as it unhappily does from the great body of the people on one most important subject,—ought we now unnecessarily to come to a decision upon another, which will be equally canvassed in every corner of the kingdom, and in

which we may again have the misfortune to be at direct issue with our constituents? *(No, no, from the Ministerial Benches.)* What! do the Hon. Gentlemen imagine, that the nation has forgotten the calamities and disgraces of Walcheren, or that it concurs with them in believing that the expedition was either wisely planned or ably executed? *(Hear! hear! hear!)* If they will not allow that the public voice is against them on that question, let them suppose, if they please, that the country is ready to support them in similar expeditions;—let them suppose, if they can, that the Country is prepared to approve of their committals, and to join in the construction which they may think proper to give to all publications reflecting upon their past proceedings. If they do so far shut their eyes as to believe that the Country approves of such measures, I fear, that they will soon be awakened from their delusion by its consequences, and that they will be amongst the first to regret those measures which they now so pertinaciously defend." *(Hear! hear! hear!)*

After a long Debate, in which Mr. Stephen, Mr. Adam, Mr. Whitbread, Mr. Canning, &c. bore a part, the House divided, when the numbers were—

For Lord Folkstone's Amendment	80
Against it - - - - - - - -	271
Majority	191

The Resolutions proposed by Mr. Lethbridge were then carried without a division.—Upon the Motion of Sir Robert Salusbury, that Sir Francis Burdett should be committed to the Tower, an Amendment was proposed by Mr. Adam, that the Hon. Baronet should be reprimanded in his place. The House again divided, and the numbers were—

For the Amendment - - -	152
For the original Motion - -	189
Majority for Sir Francis Burdett's Committal - -	37

IMPRISONMENT OF MR. GALE JONES.

April 16, 1810.

Sir Samuel Romilly rose, pursuant to notice, to move for the discharge of Mr. Gale Jones from his confinement in Newgate, and spoke to the following effect: "Although the opinions, which I have already expressed, respecting the original commitment of Mr. Jones, remain unaltered, it is not now my intention to repeat any of the arguments which I then thought it my duty to urge in support of them. I shall rest my present motion for the release of that Gentleman on the simple ground, that the punishment, which he has under-

gone, is fully adequate to his offence. And I am the more anxious to pursue this course, because I believe, that when a similar proposition was made to this House, on a former occasion, it was opposed by many Gentlemen (who even then were of opinion that the punishment had been sufficiently severe) from the dread alone of being thought to acquiesce in the doctrines on which the motion had been supported. On this ground I shall cautiously abstain from every argument which might be supposed to call in question the powers and privileges of this House, or which might possibly tend to deprive me of a single vote. In this I shall do some violence to my own wishes, as I certainly was anxious for an opportunity (and the present seemed a favourable one) of restating some of those opinions which I felt it my duty to express on a former night, but which appear to have been misunderstood by many who have since spoken on the opposite side. I cannot, however, for the sake of myself, or from a desire to enforce my own opinions on any subject, however important, think of risking the imprisonment of a fellow-citizen even for a single day. A higher and more serious feeling than any thing connected with the vindication of myself ought now to influence my conduct. I am contending for the liberation of a British subject; and to that duty and to that object all others must give way.

"There is only one objection which I have been able to anticipate to the present measure, and that arises from the practice of this House not to listen to applications on the part of persons imprisoned under its authority, except on Petition presented at the Bar, acknowledging the justice of the punishment, and expressing contrition for the offence. I pretend not to be so well versed in the practice of this House as to know, whether this has been an invariable rule; whether it is to be considered so imperative as utterly to preclude any spontaneous act of humanity and justice. It is a rule, however, which prevails in no other Court, and it is difficult to understand on what principles it has been tolerated in this House. In the exercise of power it is always necessary so far to consult public opinion as to avoid every thing like violence to the feelings of mankind. Applicable as this principle is to all Courts, it is more peculiarly applicable to the jurisdiction of a body constituted like the House of Commons. "Armed with a giant's strength," let us not use it like a giant. Whatever may be our powers, let us at least recollect the source from whence they are derived, and the objects for which they were intended,—that the infliction of punishment should be amongst the rarest exercises of our authority,—and that justice is never so effectually administered as when it is tempered with mercy. *(Hear! hear! hear!)* It was never given either

to the House of Commons or to any other human tribunal to extend its power over the mind. The thoughts are not to be forced; there is a vigour and spring in them which at once defy and elude the dominion of man. The greatest tyranny,—the most impotent tyranny, is that which attempts to influence the workings of human intellect; it is an attempt which Justice contemns, and which Power has seldom made but to its own defeat. In spiritual tribunals,—the offspring of a dark age, and equally inimical to every principle of religion and law,—in spiritual tribunals this species of persecution is still permitted to prevail. Individuals may be there called on to abjure errors which they do not acknowledge, and to profess contrition which they cannot feel. And what are the fruits of such proceedings? what is the extent of the triumphs which these Courts enjoy,—but to make hypocrites where they have vainly endeavoured to make converts? *(Hear! hear!)* Opinions must be uncontrolled, or rational liberty ceases to exist. Supposing the most groundless opinions to be promulgated; supposing an individual to have gone so far as to assert, that the British government was a pure monarchy, and that the two Houses of Parliament were idle excrescences which might well be spared; even in such a case, would it be contended, that the offender ought to renounce opinions, which, however erroneous, he devoutly believed to be true?—

Should he be compelled to become the instrument of his own shame? Or is there nothing to atone for human error but the self-degradation of the Author? If this power of infliction is in the House (and I am not *now* here for the purpose of questioning it), it is a greater power than has been confided to any other Civil Tribunal of the Realm, and should render its possessors more than ordinarily cautious in the administration of their trust. I shall be told, perhaps, that the practice which I am condemning has been frequent and common in times past. But it is not every custom of our ancestors that is adapted to the present age. Times and manners are alike changed; the feelings of mankind are softened and improved; a juster, a more generous spirit has been awakened into action. Formerly, when a person was called to the Bar to be discharged, it was not sufficient for him to petition, and to express sorrow for his offence; he was compelled to the further degradation of asking pardon on his knees! It is little more than half a century since Mr. Murray was brought to the Bar of this House to receive his sentence in that posture*. In another case, arising out of an election

* Mr. Murray refused to submit to this degradation, and was committed to Newgate, where he continued until the end of the Session. For the particulars of his case, see Parl. History, vol. xiv. pages 887—1063.

in Cornwall, the offending parties, men of respectable character and rank, were compelled not only to receive the Speaker's reprimand on their knees at the Bar of this House, but to acknowledge their offence at the Assizes before the Judges, and the whole assembled county*. These surely are not Precedents on which the House will feel disposed to act!

"In the present case I trust that the House will rather consider what has been the punishment already suffered by Mr. Jones; and whether it is not adequate to his offence. That individual, let it be recollected, has been now imprisoned for a period of nearly two months. On the 12th of March last, at the distance of not more than three weeks from his first commitment, he was considered by many to have been sufficiently punished, and would even then in all probability have been discharged, had he submitted to petition the House, and to acknowledge his guilt. For this omission, he has since undergone an additional imprisonment of five weeks!

"No one will affect to say, that the publication for which Mr. Jones was originally committed

* The parties subjected to this degradation were, Sir Reginald Mohun, Sir William Wray, Sir Bernard Granville, Sir John Trelawney, Richard Edgecombe, John Mohun, Walter Langdon, Richard Trevanion, and Edward Trelawney, Esqrs.—See Journals of the House of Commons, vol. i. pages 873, 895, 896, 897.

does not constitute an offence of greater magnitude than his subsequent neglect to comply with a formality of the House; and yet, whilst a confinement of three weeks is deemed sufficient for the former, nothing less than imprisonment until the end of the Session is to be considered as an atonement for the latter! And for what is he to undergo this long privation of liberty? For an adherence to what he deems the truth. *(Hear! hear!)* For myself I can truly say, that was I in the situation of Mr. Jones, I would suffer any extremity,—highly as I prize it, I would sacrifice even my liberty, rather than consent to purchase it, by a pitiful recantation of my real sentiments. Allowing that Mr. Jones entertains erroneous opinions as to the extent of Parliamentary Privilege,—that he has been biassed by any of those motives, which after all have no small influence in the decisions of the wisest among men,—an undue respect for the authority of others,—a long habit of cherishing particular feelings, or of beholding certain objects in a dim and contracted point of view; allowing that he has misused the lights given him,—that he has misunderstood precedents, or mistaken principles,—is there no provision against his error,—is there no remedy in the State-herbal for his malady but indefinite imprisonment? Is this punishment to be inflicted for difference of opinion, and for not acknowledging as *true*, what, in his conscience, perhaps,

he believes to be *false?* And finally, is the sufferer to be released not by the justice or humanity of this House, but by its want of power? *(Hear! hear!)*

"Such is the mode of proceeding which many would counsel us to pursue. For my own part, I am at a loss to discover either its object or advantage. What is the credit, what is the honour which can possibly result to this House from its triumph over Mr. Jones,—from the exacted homage or further punishment of an humble individual, who obtains his livelihood by presiding at a debating society? Let me entreat the House to reflect upon its proceedings; let me implore it to be no longer swayed by feelings of offended pride and false dignity. Let us rather shew ourselves superior to all narrow and selfish views, and pursue that course which justice and humanity so obviously point out. I will trespass no farther on the attention of the House, but shall conclude with moving, that John Gale Jones be brought to the Bar to-morrow, and then discharged."

The motion of Sir Samuel Romilly was supported by Lords A. Hamilton and Folkstone, by the Master of the Rolls, Mr. Curwen, Mr. Whitbread, Mr. Wilberforce, &c. &c. and opposed by the Chancellor of the Exchequer, Mr. Ryder, Mr. Bankes, Mr. Croker, Mr. Canning, and Mr. Windham. They in general con-

tended, that the severity of the punishment had been occasioned by Mr. Jones's own obstinacy, and that there existed no sufficient reason for departing from the established practice of the House. And Mr. Windham (in alluding to a meeting of the Electors of Westminster which was to be held in Palace Yard on the following day) demanded of the House, whether, on the vigil of their saint, it would give up Barabbas to the people?

Sir Samuel Romilly replied; after which the House divided:

For the original Motion -	112
Against it - - - - - -	160
Majority - - - - - - -	48

THE CRIMINAL LAW.

May 1, 1810.

Sir Samuel Romilly moved the order of the day for the further consideration of the Report upon the Bill for stealing in a dwelling-house. On the question that the Bill be engrossed, it was *opposed* by Mr. Herbert, of Kerry,—Mr. Davies Giddy,—Mr. Windham,—the Attorney and Solicitor General,—Mr. Frankland,—and the Chancellor of

the Exchequer; and *supported* by Sir John Newport,—the Master of the Rolls,—Mr. Morris,—Mr. Wilberforce, and Mr. Canning. Sir S. Romilly said, that after what had been urged that night in defence of the Bill, it could not be necessary for him to occupy much time in his reply. "The objections," he continued, "which have been offered to this Bill are of two kinds, the first relating to the opinions of the Author of the measure, and to the further objects which he is supposed to have in view, and the latter to the demerits of the Bill itself. It is difficult, however, to understand why, if the Bill is good in itself, it should be rejected, because its Author entertains, in the opinion of some Gentlemen, very erroneous notions on the subject of Criminal Law. Was I soliciting a personal favour for myself, my misconduct on other occasions might have been a just ground of refusal in the present instance; but if, in a public measure like this, I am for once right, what does it matter that in others I have been wrong? With respect to further objects, even if Gentlemen choose to give so much weight to their own conjectures on the subject, as to judge of this measure by others, which, they suppose, are to follow, it is still difficult to understand how the passing of the former can in any way facilitate the success of the latter, unless, indeed, the benefits which upon experience shall result from the present measure, are to form a recommendation to further alterations.

"I have been equally surprised at some of the various objections which have been made to the Bill itself. One Gentleman has fancifully imagined, that it tends to introduce something very like the old French police; and another sees in it the beginning of a change, which will not stop until it has brought about a Revolution, like that which has taken place in France. I must be pardoned if I express my astonishment at the imaginations which can conjure up such consequences from an attempt to reform, in a very few articles, the Criminal Law of the Country. I know that I have been represented as being actuated by very mistaken notions of humanity; and though I certainly do not feel it to be a great reproach, to have acted from motives of humanity only, yet I must say that I have never professed such motives, and that in proposing the present Bill, my chief endeavours have been exerted to shew, that it is one more likely to prevent the commission of crime, than the existing Law which it is intended to supersede. I rest its defence upon grounds of policy and expediency; and the coldest and harshest reasoner upon such subjects is as much bound to support this measure, as those whose generous hearts feel most sensibly the unnecessary sufferings which are inflicted on their fellow-creatures.

"It has pleased the Opposers of the Bill to say that I have proceeded upon theory alone. This is a charge, which I cannot but think is

more applicable to my opponents, who, on this occasion at least, seem resolved to cling to their own theory in defiance of all experience. That the crime of stealing in dwelling-houses has greatly increased under the present existing Law, cannot be, and is not attempted to be denied, and yet that very fact is strangely appealed to as a ground for preserving the Law unaltered. That the severity of the Law, as it now stands, has a tendency to prevent men from prosecuting, is a truth of which few persons who will only reflect upon what has passed under their own immediate observation, can entertain any doubt. The Solicitor General, however, has denied that this is the case, because prosecutors, he alleges, are not bound to indict capitally, though the crime by Law is capital. An extraordinary state of the Law, to be approved of by men of high rank in the profession, that it should depend not on the will of the Legislature, or of any public Officer, but of the most obscure persons in the community, whether the judicial Tribunals shall have cognizance of the offence as a capital crime, or as one far inferior in degree of criminality! But even although in many cases it might depend on the prosecutor, whether he would indict capitally or not, yet it cannot be so in all cases; and where the criminal has been committed for a capital offence, and the prosecutor bound, by recognizance, to prosecute, he has no choice. But however the fact may be, it certainly is not gene-

rally known that a prosecutor may indict in what form he pleases, and the consequence undoubtedly is, that persons robbed submit patiently to wrong, rather than hazard a complaint, which might, in their apprehension, cost the offender his life. This most frequently happens in those offences which are considered as the most aggravated of their class, namely, robberies committed by servants. How many masters are there who think that the loss of their property is nothing when compared with the evil of having the rest of their days embittered by the recollection, that they had sent to die, by the hands of the Executioner, a fellow-creature, with whose countenance they were familiar, and who had been for years attending them, and doing them offices of kindness!

"But it is not the prosecutor alone; even witnesses and jurors are deterred by the severity of the Law from a just discharge of their duty. How frequently are Juries in the habit (in order to avert from some unfortunate Criminal the extreme penalty of the Law), of even acting in violation of the sacred oaths they have taken, and of finding verdicts against the clearest evidence! Amongst many examples which might be mentioned, is one which happened little more than a twelvemonth ago. A woman of the name of Bridget Macallister was indicted at the Old Bailey for stealing a ten pound Bank of England note in a dwelling-house. The fact was clearly proved,

and the Jury convicted the prisoner, but found her guilty of stealing what was of the value only of thirty-nine shillings. Thus twelve men executing a most sacred judicial office, declared before God, and as they hoped for salvation, that a ten pound Bank of England note was worth only thirty-nine shillings! It may be well doubted whether this is a crime inferior in moral guilt, or of less dangerous example than the offence which it was intended to screen.

"A Right Hon. Friend of mine (Mr. Windham), who has treated with ridicule the doctrine, that the certainty is much more efficacious than the severity of punishment, for the prevention of crimes, probably does not recollect that Dr. Paley, whose authority he has held so high, and whom he has represented as having the singular good fortune of being always right, lays down that position himself as one that is incontrovertible. But it has been alleged, that all the Judges are adverse to this measure. Upon what authority this has been asserted I know not. I have sent to all of them a statement of my view of the subject; and although I have the honour of being known to all, and of enjoying the friendship of many of them, not one of them has signified to me his disapprobation of what I had proposed. Judging, however, by their conduct in refusing, as it were by common consent, to execute this Law, I cannot but conclude that it is their opinion that it ought not to exist.

"There are some, indeed, of the evils resulting from the present system, of which the Judges have an experience, that no others can have. Any person who has been in the habit of attending in criminal tribunals, must be sensible that nothing is more admirably calculated to make a deep and lasting impression on the minds of the spectators, and to command obedience to the Laws, than the awful ceremony which takes place after an offender has been capitally convicted. The Judge proceeds to pronounce upon him, the dreadful sentence of the Law, and to exhort him to prepare himself to meet his Creator; but when it is known, that out of the number of those on whom this sentence is pronounced, probably not one will be left for execution, it loses all its effect, and becomes a mere idle form. This probability, indeed, has often the fatal effect of making the prisoners deaf to the admonitions of Religion. They are deluded with false hopes, till at last the fatal order for their execution arrives; and their condition is the more miserable, from the very hopes which they had permitted themselves to indulge."

The House divided, when there appeared to be,

For the Bill - - - -	33
Against it - - - -	35
Majority against it -	2

On the gallery being re-opened, Sir S. Romilly

was found lamenting the thinness of the attendance, and hoping that Members would not in such a state of the House, press the consideration of the remaining Bills.

Mr. Perceval and Mr. Ryder spoke in favour of an immediate decision: but the further consideration of them was finally postponed for a few days when the Bill for privately stealing in a shop was allowed to pass without a division.

RETURN OF COMMITMENTS.

May 4, 1810.

Sir Samuel Romilly rose pursuant to notice, to move for a return of the number of persons committed to prison within a certain period, in England and Wales. "The information" (said Sir S. Romilly) "which I now move for, would be extremely desirable to be laid before the House, were it only with a view, if I may so express myself, to ascertain the state of the moral health of the Country. In consequence of a Motion which I made in the last Session upon this subject, I have reason to think that returns have been made to the office of the Secretary of State, containing much information, but not all that, it is

desirable, should be in the possession of the public. In the return on the table from the Secretary of State's office, we have only the number of commitments, of those who have been acquitted, or discharged on Bills not found, or by proclamation. But the return does not contain that part of the information which will be most particularly desirable; a statement of the offences for which the several prisoners committed, were either convicted or else acquitted and discharged. It would be important for the House to be in possession of such information, in order to know how many have been committed for murder, and other crimes, with respect to which, no alteration of the Law is in contemplation; and also how many for larcenies, and other minor offences. From the return on the table, it will be observed, that by much the largest class consists of those committed for larcenies, being all together 2423. With respect to these, it will be necessary to know how many were committed for privately stealing in houses, or in shops, as well as what number have been tried, what number acquitted, and what number discharged. Information of this description will be most satisfactory, before any alteration shall be made in the Law, because, every such alteration being an experiment, it must be desirable to ascertain, as nearly as possible, the grounds upon which the experiment rests. The information to which I have alluded, will afford the

best answer to arguments founded on presumptions which had been resorted to on a late occasion. The Motion I propose to make is, 'That an humble address be presented to His Majesty, that he would be graciously pleased to direct, that there be laid before the House a return of the number of persons, male and female, who have been committed for trial at the different Assizes, or great Sessions, from the year 1805 to the year 1809, inclusive; distinguishing the charges upon which each was committed, the crimes for which indicted, convicted, or acquitted,—discharged upon no Bills be found, and discharged by proclamation; together with (under each head of offence) the number of those who were executed.'

"I am aware of the difficulty of procuring a return such as I have called for. When I made a similar motion last year, the Secretary of State informed me, that no such return existed in his office. By his politeness and attention, however, in calling upon the Clerks of Assize for all the information upon the subject that they could supply, something has been obtained, though not all that is necessary. We have a return of the commitments and the indictments, and I have no doubt that a return may be also obtained from the Clerks of Assize, of the convictions and of the offences, whether laid in the indictment or otherwise.

"But my object is not alone to obtain this information because it is valuable, but with a view to the renewal of a measure, the fate of which on a former night I cannot but deplore. If, indeed, I thought the sense of the House was decidedly against that measure, I should not bring it forward again. But when I consider that it has been lost only by a majority of two, and that of those who voted against it, two at least seemed to be *doubtful* as to its expediency, and voted against it only as connected with some other measures of which they did not approve; I shall have no hesitation in again submitting it to the decision of the House. For my own part, as far as relates to that Bill, I feel myself in the situation of a criminal, not convicted of the crime with which he stands charged, but punished for some other act which he is supposed to have done or intended. If the forms of the House would allow it, I should even bring forward the same Bill in this Session; at all events, it is my intention to do so early in the next. On a question of this description, totally unconnected with party, I have to lament, that any one should have thought it necessary to canvass for votes against it; and yet it is obvious, that all the Gentlemen in office then present voted against it. Of this I do not complain, though I must complain of the thin attendance in the House on that occasion. It is impossible, one

would imagine, that Gentlemen can be indifferent on a question in which the fate and even the lives of seven or eight hundred fellow-creatures are involved. It has been said, that many Gentlemen friendly to the measure would have attended if they had known that the Bill was to come on. But I had given notice of the day in rather a full attendance; and I do think it strange that the Highgate archway, or the Holloway water Bills, should obtain a fuller attendance than a measure of such vital importance."

Sir Samuel Romilly concluded with making his proposed Motion, which was put and carried; and also a Motion for a like return of commitments for trial at the Quarter Sessions, with similar distinctions.

PENITENTIARY HOUSES.

May 9, 1810.

Sir Samuel Romilly rose to submit to the House a Motion on the subject of Penitentiaries, and, after a few prefatory observations, spoke to the following effect. "In considering punishments as they operate in the prevention of crimes, they

may be divided into three classes. The principle of the first is, that the punishment of the individual should operate on society in the way of terror;—the second is, to put it out of the power of the person offending to commit crimes in future, either for a certain time specified in the sentence, or for ever;—the principle of the third is, THE REFORMATION OF THE OFFENDING PARTY. The last, I fear, has been very much neglected of late years, though I am ready to admit that there are many honourable exceptions in the conduct of the different Counties which have established Penitentiaries.

"The favourite system which now unhappily prevails, and which has gone a great way towards superseding every other, is that of Transportation. Before the Restoration of Charles II. this mode of punishment was unknown. The punishment of exile had, indeed, existed from the time of Elizabeth*; but the first Statute inflicting transportation, in any case, was passed in the reign of Charles II.† Afterwards, other Statutes were enacted, allowing Judges, in their discretion, to transport persons, convicted of offences within the benefit of clergy, to our settlements

* 39 Eliz. c. 4.

† 18 Car. II. c. 3. Both exile and transportation were unknown to the Common Law.

in North America *. They were not, however, sent into perpetual slavery, but were bound by Indentures for seven years, and for the last three years they received wages, as the means of providing a fund, which might enable them, on returning to their native Country, to recommence life with some prospect of success. Yet there was one evil attending on this mode of punishment. It was frequently most unequal; for, whilst to the richer convicts, who were enabled to buy off their term of service, it was only exile; to the poor it was labour superadded to exile. Thus the Law continued, until the revolution in America rendered it impossible to send over any more convicts to that Country.

"In the beginning of the American war, the system of imprisoning convicts on board hulks was first introduced; and an Act was also passed, allowing the Judges to transport such offenders, as had been previously liable to be sent to America, to any other part beyond the seas †. A mode was at the same time devised for restoring criminals to the habits of industry and virtue. This plan was first set on foot by the celebrated Mr. Howard, Lord Auckland, and Mr. Justice Blackstone. The latter, in his Commentaries, has descanted warmly on the advantages which might

* 4 Geo. I. c. 11—and 6 Geo. I. c. 23.

† 19 Geo. III. c. 74.

be expected from such a measure, and has recommended the establishment of Penitentiaries as peculiarly adapted to carry its objects into effect *. But though the Law for this purpose (a monument of eternal praise to those who framed it), has existed for thirty-six years, it is still allowed to remain a dead letter on the Statute Book.

"While the Law thus lay dormant, a project was unhappily proposed to Government of sending out convicts to establish a colony in New South Wales. It was, perhaps, the boldest and most unpromising project ever held out to any Administration. The colony was to consist entirely of the outcasts of society and the refuse of mankind,—of persons who had not even been left to their own natural profligacy, but who had acquired a matured virility in vice by their education on board the hulks. I am justified in this assertion by the Report of a Committee of the House of Commons. In the month of February 1787, the first embarkation was made for this new colony, consisting of 264 convicts who had been sentenced to transportation for seven years. Out of this number, 233 had then lain for above four years in the hulks, and had consequently only three years of their term remaining unexpired. This is a circumstance which I regret to say, has since become too common, there being even instances

* Black. Com. Part IV. page 371.

in which offenders have been sent out to New South Wales, who had been imprisoned for above six out of the seven years, to which their punishment had been originally limited. With respect to the first colonists there was yet another error. Instead of selecting persons who were acquainted with agriculture and the employments of a country life, the directors of the undertaking chose only those who had been convicted in London and Middlesex, and who, as inhabitants of a large city, might be easily conceived to be the most unfit persons for a new colony. In addition to all this, it appears, that no provision was made for the return of these unhappy people after the expiration of their term of punishment. This is also an evil which still continues to exist, and is in many cases productive of the greatest hardship and injustice. It is true, that the male convicts, though destitute of money, are frequently enabled to return home, by working their passage. But what resource is left to the females? To many of these, who have been perhaps transported at an early age, the difficulty, if not impossibility of returning, is a serious hardship.

"The whole of this subject well deserves the consideration of the Legislature. Not that I am so sanguine as to believe that returned convicts, —that persons who have been for so many years immured within the very worst schools, and exposed to the pernicious influence of the very

worst examples, can so far escape or recover from all moral contagion, as to be reclaimed into the sober habits of honest industry. The conduct of those who have undergone their allotted term of punishment (as far as that conduct is known) is such as forbids us to indulge any such expectations. Some of these unhappy persons, as I have before observed, are in the habit of working their passage home, but they return to their native land far more desperate and depraved than when they left it. Others, wandering among the islands of the South Seas, become the apostles of mischief. The desperate courage, the enterprising spirit and resources which frequently characterize these adventurers, fit them to be chiefs among savages. They teach them navigation and useful arts in peace; they direct their expeditions in war; but at the same time they acquire the most pernicious influence over their minds, tainting them, by their own evil examples, and rendering ineffectual the benevolent labours of succeeding missionaries. These are amongst the evils of the present system of transportation. There is also another, which I ought not to omit alluding to on this occasion. I mean the enormous expense of this establishment; an expense infinitely exceeding any thing that could be required for the erection and support of Penitentiary Houses."

Sir Samuel Romilly then went on to state, that he had been convinced by the Book of Sir Richard

Phillips (to whom he thought very great credit was due for his attention to this part of his duty, as Sheriff), that the prison of Newgate could never be converted into a place for the reform of criminals. After paying some very high compliments to the memory of Mr. Howard, he said, that he was not, however, an advocate for solitary imprisonment, unless combined with useful labour. To immure a man of social habits within a solitary cell, was frequently a punishment worse than death.—He concluded, by moving an Address to His Majesty, praying him to direct the Act of the 19th of his reign, relating to Penitentiary Houses, to be carried into execution.

Mr. Secretary Ryder concurred in many of the observations which had fallen from his Hon. and learned Friend; but hoped that he would put off the investigation for a short time, to enable him (Mr. Ryder) to inform himself more fully on the subject.

Mr. Wilberforce, Sir William Milner, and Mr. Wellesley Pole, expressed their opinions in favour of the Penitentiary system. But Mr. Windham thought, that, as the Botany Bay colony was thriving and had cost a good deal of money, it need not be thrown away. He did not like the fanatical religion and peculiar habits learned in Penitentiaries.

Sir Samuel Romilly, after a few observations on what had occurred in the Debate, stated, that as his purpose seemed, in general, to meet with

the approbation of the House, and as opportunities to make inquiries upon the subject might be beneficial, he would, with the permission of the House, withdraw his present Motion, and make it on a future day.

PROCEEDINGS RESPECTING SIR F. BURDETT'S NOTICES OF ACTION AGAINST THE SPEAKER AND THE SERJEANT-AT-ARMS.

May 11, 1810.

Mr. Davies Giddy having moved, that the Speaker and Serjeant-at-Arms should be permitted to appear, and plead to the actions which had been commenced against them by Sir Francis Burdett, a long Debate ensued, in which the Chancellor of the Exchequer, Lord Milton, Lord Folkstone, Mr. Ponsonby, Sir Samuel Romilly, &c. &c. &c. bore a part. Sir Samuel Romilly spoke to the following effect.

"Sir, disagreeing, as I do, with my Hon. Friend (Mr. Ponsonby) on the present question, I cannot suffer all his arguments and observations to pass by without notice. However desirous of unanimity on so important an occasion,—however reluctant to consume the time of the House,

I cannot consent to compromise any of the opinions which I thought it my duty to express on a former night. Not that I shall follow my Hon. Friend through all the topics on which he has so ably touched. It is now unnecessary, the question before the House being so very different from the one which existed on a former occasion. The question then went to the broad principle, and to the extent of the privileges claimed by the House of Commons; it is now confined to the propriety of submitting them to the judgment of a Court of Law. Sir, I cannot agree in the opinion which has been maintained by many of my Hon. Friends, that, the Privileges of Parliament are not to be questioned in a Court of Law. The House undoubtedly has privileges, which are a part of the law of the land, and as such would be recognized in any Court of Law. But I do entertain very serious doubts as to the legal existence of any rights, recognized only by the body which exercises them. With regard to the nature of the plea to be put in upon this occasion, I have not yet been able to collect the intentions of the House. I conceive, however, that the objection generally meant to be made against all farther proceedings in these Actions, is, that the Speaker and Serjeant, having acted, each in his respective capacity, in execution of an order of this House, cannot be sued in any action consistently with the Privileges of Parliament.

But admitting, that the Speaker, acting as he must be presumed to have done, in strict conformity to the instructions of the House, may resort to this plea, it does not follow, that the Serjeant can participate in its benefit. The charge against him may be not simply that he executed a Warrant under the authority of the House, but that he has done it in an illegal and unjustifiable manner. And though the simple execution of such Warrant should be held not to be cognizable in a Court of Law without a breach of Privilege, no one, I think, will venture so far as to contend, that the *manner* of executing it is not open to legal inquiry. The legality of a Warrant, however unquestionable, cannot justify any impropriety in the mode of enforcing it. How then is the circumstance of the Serjeant-at-Arms having acted as the Officer of the House, to be pleaded in bar of any Action against him for what he may have done in execution of its Warrant?

"As to the doctrine, to which I have before alluded,—that the Privileges of the House of Commons are not to be questioned in a Court of Law, I would entreat all those who hazard it, to reflect upon its consequences,—to recollect, that they are asserting Privileges not for themselves alone, but for the Members of another House, who have no common feeling or common interest with them, and who are not delegated to their situation, as the Members of this House are supposed,

and ought to be by the free voice of the people. To maintain such a proposition,—to contend that whatever has been done against the Privileges or supposed Privileges of either House of Parliament, may be arbitrarily punished without legal investigation or appeal, is, I repeat, a doctrine fraught with danger to the Constitution, and contrary to every principle of English Law. To what consequences may it not lead? What abuses might it not sanction?—Let us suppose a Resolution of either House of Parliament restricting the subject from the exercise of some legal right, and that it had been the fate of any individual to be committed for the exercise of that right in opposition to such a Resolution. Is an act like this to be defended, or the man who has suffered under it, to be without remedy or appeal? Improbable as it may appear, this is a case which actually happened, and at no very distant period, in Ireland. The two Houses of Parliament in that country voted any man who should demand, or be concerned in prosecuting a suit for the recovery of tithes of agistment, an enemy to his country!—Is such a Resolution to be maintained as a Privilege,—a Resolution which goes to deprive the subject of his legal rights and undoubted property?—The case, although an extreme one, has occurred once; and who can take upon himself to answer, that it will never occur again in the variations of future times and circumstances? If the

Privileges of Parliament are not to be discussed in Courts of Justice, how does it happen that persons, committed by either House, are brought up on Writs of *Habeas Corpus* to the Courts of Law, where the authority, under which the Commitment has been made, is always ascertained by the Judges, before the party can be remanded?

"The Commitments by the two Houses of Parliament have been compared by analogy to the proceedings of Courts of Law in cases of contempt; and it is argued, that where one Court has thought fit to exercise its power on such occasions, the person imprisoned has no appeal,—no redress from the interference of any other Court. In illustration of this argument, my Right Hon. Friend (Mr. Ponsonby) has stated, how he would himself have acted, in the situation of Chancellor, towards any Solicitor serving a notice of Action against him in a Court of Law, for any thing done in his judicial capacity. He would have committed him to custody,—and no other Court, he contends, could have interfered for his relief! Considering the high quarter from whence this opinion proceeds,—respecting, as I do, the deep legal knowledge, and political independence, which have so justly entitled my Right Hon. Friend to the gratitude of his country, I am certainly disposed to pay all becoming deference to the weight of his opinions. In the present case, however, I cannot concur with him. I must dissent from a

doctrine so grievous in every point of view,—a doctrine too, which I rejoice to think, has been refuted by the decisions of our Courts of Law. I could cite numerous cases, in which persons committed for contempt by one Court, have been brought up, and upon consideration of the circumstances, liberated by another Court. There is one case to which I shall more particularly advert, because the subject was there discussed in the most ample and constitutional manner. It is the case of Bushell,—a case, which has, perhaps, contributed more to the liberty of the subject than any other that has occurred for centuries. Two Quakers (one of whom was the celebrated Penn) had been indicted in the reign of Charles the Second, for unlawfully assembling, and preaching to the people in the open street, but were acquitted by the verdict of a Jury, in opposition to the directions of the Judge. For this *contempt*, the Jurors were fined forty marks each, and on default of payment were committed to prison. But the Commitment was questioned, and, on a *Habeas Corpus*, brought in the Court of Common Pleas, was declared to be illegal, that able and intelligent Judge, Chief Justice Vaughan, not only finding himself entitled to inquire into the circumstances of the case, but even to liberate the persons who had been committed. In the course of the learned argument which was held on that occasion, various cases were cited to shew the

jurisdiction of the Court, and particularly that of a man committed by Sir Nicholas Bacon for a contempt, but released by the Court of King's Bench, because the Commitment was for contempt generally, without specifying in what the contempt consisted. In the case of Bushell, however, the contempt was expressly stated to be for finding against evidence, and the opinions of the Judge*. The analogy, therefore, which has been referred to with so much confidence by my Hon. Friends, as existing between the Privileges of Parliament, and the proceedings of our Courts of Justice, in cases of contempt, really proves nothing in support of their doctrines. On the contrary, its direct tendency is to overturn them.

"Sir, I have already detained you too long; but I felt unwilling to be misunderstood on so important a question. My opinion will be of little value to the House, but it is of consequence to myself. However vain it may appear to lament the past, I must still express the regret which I shall never cease to feel, that we should have been involved in a contest like the present. Our dignity, it has been said, required it! And is there an individual, who seriously believes, that the dignity of this House has been exalted by such a proceeding? that it can ever be exalted in a

* See Vaugh. 135; Sir John Hawles's "Englishman's Right;" Howel's State Trials, &c. &c

contest with the people? What kind of dignity is that which has no reference to character, or to the opinions of the country? In what does it consist, or where was it, when even those, who have declaimed most loudly on the subject, were compelled to oppose the expulsion of Sir Francis Burdett, not from any feelings of tenderness and regard towards him, but from a conviction that the Electors of the great City of Westminster conceived his Judges to be so much in the wrong, that they would have instantly re-elected him? Sir, the House would better consult its true dignity by a conduct above all suspicion and reproach,—by sympathizing with the wishes of the people, and by cautiously abstaining from the exercise of all doubtful Privileges on slight or unnecessary occasions. The House has undoubtedly Privileges of the highest nature; Privileges which were designed as trusts for the benefit of the people. It would be a most calamitous and unnatural state of things, if, instead of being respected as the safeguards of public freedom, they should ever be generally believed to have been rendered subservient to other ends, and to have been perverted into instruments for repressing the independence and defeating the rights of the People."

PENITENTIARY HOUSES.

June 5, 1810.

Sir Samuel Romilly said, that in rising to make his promised Motion relative to the erection of Penitentiary Houses, he should not go over the grounds at any great length, upon which he thought this measure ought to be adopted, and which he had fully stated when he before submitted to the House the Motion which he was now about to renew. "The object of this Motion (said he), is to carry into execution a plan for rendering the administration of the Laws more effectual; a plan which holds out a better prospect of reforming Criminals, and of attaining all the other objects of Penal Laws, than any that has hitherto been found practicable. It is a plan which was formed by some of the wisest men in this country,—men who had devoted much of their valuable time to this important subject,—by Mr. Justice Blackstone, Mr. Howard, and Lord Auckland. Their great object was the Reformation of Criminals, and this they proposed to effect by secluding them from their former associates,—by separating those of whom hopes might be entertained, from those who were de-

sperate,—by teaching them useful trades,—by accustoming them to habits of industry,—by giving them religious instruction, and by providing them with a recommendation to the world, and the means of obtaining an honest livelihood after the expiration of the term of their punishment. In the opinion of Mr. Justice Blackstone, it was a system which united in itself so many advantages, and held out so flattering a prospect of success, that he did not hesitate to declare, 'that, if properly executed, there was reason to hope that such a reformation might be effected in the lower classes of mankind, and such a gradual scale of punishment be affixed to all gradations of guilt, as might in time supersede the necessity of capital punishment, except for very atrocious crimes*.' This plan, however, has remained on the Statute-book for upwards of thirty years, without any effectual step having been taken to carry it into execution. In the mean time the want of it has been severely felt, and all have confessed the inconvenience and inefficacy of the present system.

"There are three species of punishment which by the Law of this country can be inflicted for crimes above the description of misdemeanors, and not yet punishable with death: that of Imprisonment in Gaols, or Houses of Correction; Impri-

* Com. vol. iv. p. 371.

prisonment on board the Hulks; and Transportation.

"With respect to Imprisonment, it has been found, that, in general, persons who have been confined in common Gaols return to society much worse than when they were first withdrawn from it; that men who are imprisoned for their first offence, become in a short space of time hardened and desperate, and qualified to commit the most dangerous crimes; that they are matured in villany to a degree which would be thought hardly possible in so short a period. To remedy this evil, expedients have been devised; but none have been executed. The Prisons of this Country yet remain a reproach to it. No one step has been taken to adopt a plan, by which the different classes and species of offenders might be separated from each other. Offenders of the very worst description are indiscriminately mingled with those whose first offence (and that, perhaps, a very slight one) has brought them into a situation, from which, with a little care, they might, in all probability, be reclaimed. Persons who have been committed on suspicion of an offence, whose guilt or innocence is yet a matter of uncertainty, are compelled to associate with those whose crimes have been ascertained, and the danger and contagion of whose society, and manners and examples, cannot be doubtful. Such is the general

state of the Prisons of this Country, with a very few exceptions highly honourable to the counties in which they are to be found. The most remarkable of these exceptions are the Prisons of Gloucestershire, under the care of Sir George Paul, and the House of Correction at Southwell, in Nottinghamshire. Amongst the Prisons pre-eminent for the badness of their police and their general regulations, I am sorry to be obliged to mention those of the Metropolis. The Prison of Newgate particularly seems to combine every defect of which a place of confinement is capable. Whilst a national monument has been erected to the memory of Mr. Howard, as a reward for his exertions to reform our Prisons, the City of London leaves, close to the statue we have raised, this Gaol, as a monument of its own disgrace and inhumanity, and in contempt of those wise regulations, which it was the object of his benevolent life to recommend.

"Imprisonment on board the Hulks is still more pernicious, and productive of still greater evils, even than imprisonment in our common Gaols. There is no responsible person to determine what description of Offenders shall be sent on board these vessels. Convicts from remote parts of the country, and those who have long infested the streets of London;—Boys for their first offence, and long practised Robbers and Adepts in every species of crime;—those who are

not intended to be removed to any other place of punishment, and such as are waiting only for an opportunity of being conveyed to Botany Bay, are all confounded together; and, in the intervals of their labours, encourage and instruct each other in the most daring crimes, and in the most odious vices. Mr. Howard has stated, as the result of much observation and inquiry, that of the persons confined on board the Hulks, those who came from the Country generally died in consequence of their confinement, and of the horror they felt at the examples and the scenes exhibited to them; and that those who were sent from great Manufacturing Towns, generally became in a short time the most daring and dangerous of Offenders.

"When this subject was last before the House, the Secretary of State told us, that lately a great reform had been effected on board the Hulks, and that they were no longer liable to the objections formerly made to them; and this happy change he ascribed to the Gentleman under whose superintendence they are placed. I am sorry to say, that, that representation does not agree with the accounts which I have received. I have no doubt, that the reports which have been made to that Gentleman by the persons he employs, are perfectly conformable to the statements which he has made to the Secretary of State; but has he (though I understand that he inspects the Hulks

himself) been at Portsmouth more than once within the last year? and if he has, is it or is it not true, that although the most vicious and depraved habits and examples prevail there, there are, at this moment, no less than fourteen or fifteen Boys to be found amongst the prisoners? The truth is, that no care, no attention will ever be able to correct the defects of this species of punishment. The mischief, as is truly stated by the Committee, of which you, Sir, were the Chairman, in their Report of 1797, is not so much in the mode of conducting the establishment, as in the establishment itself. The vices of it are inseparable from the system.

"On the subject of Transportation to New South Wales, I have so lately troubled the House, that I should be inexcusable in now trespassing upon its patience at any length. In considering this punishment as it operates in the prevention of crime, whether by the terror which the example should inspire, or by the reformation of the individual punished, we shall find it extremely inefficacious. As an example, the effect of the punishment is removed to a distance from those on whom it is to operate. It is involved in the greatest uncertainty, and is considered very differently according to the sanguine or desponding disposition of those who reflect on it, or according to the more accurate or erroneous accounts of the Colony which may happen to have reached them.

The severity, indeed, or lenity of the punishment, depends not on the degree of guilt of the Offender, but of his talents, and acquirements, and qualifications, for the new state of things into which he is transported. Possessed of that knowledge and skill which happens to be most in request, it matters little what has been his offence; he may chance soon to find himself relieved from all restraint, and in a situation which he never could have hoped to attain in his own country. I have been informed, that in the transactions which immediately led to the revolution which has lately taken place there, an Attorney, who here stood in the pillory, and was afterwards transported; a man who here would have been an outcast from all society, was confidentially advised with by those in authority, and enjoyed something very like the influence of an Attorney-general, because he was well acquainted with legal forms.

"To judge of the effects which are produced in the Convicts in the way of reformation, one has but to read the History of the Colony which has been published by Mr. Collins, a writer who is above all suspicion of exaggerating the evils he relates; for, in spite of the facts which in every page of his book pronounce the condemnation of the whole system, he is uniformly its panegyrist. The History which he has written is little more than a disgusting narrative of atrocious crimes, and most severe and cruel punishments. It is

indeed a subject of very melancholy, and to this House of very reproachful reflection, that such an experiment in criminal jurisprudence and colonial policy as that of transportation to New South Wales should have been tried; and that we should have suffered now four-and-twenty years to elapse without examining, or even inquiring into its success or failure. An experiment more unpromising or bolder than that of founding a Colony, which was to consist altogether of thieves and convicts, of the very refuse of society, of men habituated to idleness, and having no motive for wishing success to the Colony they were founding, never was tried in any former age or by any other nation. When we formerly transported Convicts to North America, they found themselves immediately on their arrival in a society, where habits of industry and regularity prevailed, and where the vices or crimes of an individual marked him out as an object of infamy or of punishment; but in the infancy of the Colony in New South Wales, guilt and vice were the characteristics of the whole Nation. It was to be a people of thieves and outlaws, under the control of their military guards. Thieves and their Keepers, Prisoners and their Jailors, these were to be the whole population.

"To have rendered such a project, by any possibility, successful, the persons transported should have been only those who were sentenced

to that Punishment for life, and not men whose term was limited to a few years, and who would soon have a right by law to quit the Colony. The greatest number, however, who were transported, were of this last description. In the first embarkations which took place, the gross injustice was committed of not sending to the Colony any account of the period at which the sentences commenced; and Collins relates, that when several Convicts claimed their liberty, it was necessary to inform them that inquiry should be made in England, as to the truth of their statement, but that they must remain in bondage till an answer could be received, which would be at least a year and a half. During the whole time that the Colony has existed, men have been transported, who, at the time of their embarkation, had only a few years to come of the time for which they were sentenced. It appears by the returns from the office of the Secretary of State now on the table, that in June 1801, no fewer than forty men were transported, each of whom had only one year of the term of his punishment unexpired when he was embarked. Ten of them, indeed, had only nine months, and this, although the voyage is of nine months; so that when they reached the place of their punishment, they had by law no punishment to suffer.

"It appears by the same returns, that so late as in the month of August last, two men were

transported, who, at the time of their being sent out of the Country, had not two years to come of the term of their punishment. When these cases were mentioned before, some Gentlemen endeavoured to account for them, by supposing, that it must have been at the request of these Convicts themselves that they were transported: but I am fully convinced that there is no foundation whatever for that supposition. The last instances are so recent, that the fact might easily be ascertained. The truth, I believe, is, that this flagrant injustice is to be ascribed only to the negligence, but a very criminal negligence it certainly is, of those on whom the execution of these sentences depends.

" Indeed, not only with a view to the prosperity of the Colony, but to the justice which is due even to convicted Criminals, none should be transported to so distant a part of the world who are not sentenced to transportation for life, unless they were, at the expense of Government, brought back to their Country at the expiration of the term of their punishment. Left to get back to their native country as they can, their only resource is, to work their passage home as sailors; but this is a resource only for the strong and healthy. To the sickly, the aged, and infirm, the sentence, which, by law is limited to a certain number of years, becomes in fact a sentence for life. With women it necessarily becomes such a

sentence in every case; and yet, from the first adoption of this system, there have been, exclusive of those who sailed a few months ago, on board the Canada transport, no fewer than one thousand seven hundred and fifty-four Women transported for the term of seven years:—one thousand seven hundred and fifty-four persons, who, for offences which the Law has declared to deserve no severer punishment than transportation for seven years, actually transported for life, and those of a sex which, if all notions of justice were to be disregarded, might seem at least deserving of some compassion. If in England any Jailor were to presume to retain a single individual in prison, though but for a few weeks, after the term of his imprisonment had expired, what indignation would not be felt at such a flagrant abuse of authority?—But the continuance of such injustice, during all the lives of thousands who are made the victims of it, passes almost unnoticed when the scene is removed to so great a distance from us.

"The punishment of transportation has, indeed, been sometimes considered as one of no great severity, and I have been very sorry to hear it so represented by those on whom the infliction of it depends. It is, indeed, often inflicted at the Quarter Sessions, for petty larcenies, not attended with any circumstances of aggravation; it is sometimes inflicted on Boys at a very early age,

merely as the means of separating them effectually from the bad connexions they may have formed at home. It is much to be wished, that those who consider transportation in this light, would impose upon themselves the duty of reading Mr. Collins's History of the Settlement, that they might acquire a just notion of all the complicated hardships and sufferings to which transported convicts are exposed.

"I have touched only on a few of the evils of this species of punishment, and it is, because I enlarged so fully before on many others, that I pass them over now. No person, surely, who has reflected on this subject, can doubt, that it is expedient to try some other mode of punishment. That of the Penitentiary Houses can, indeed, hardly be called an experiment; it has already been tried, and every where with success. We are not only informed of the good effects of it in the towns of North America, where it has been adopted, but we have seen them in several parts of England, and in the instances of those Penitentiary Houses, which the Secretary for Ireland lately mentioned in this House*. Too much

* Mr. Wellesley Pole had stated, that for want of transports, the convicts were frequently kept in prison for five or six years. It had been declared by the Judges, that those years formed no part of the time of their exile. This induced the benevolent mind of the Lord Lieutenant to examine into so crying an

praise, indeed, cannot be given to the Irish government, for the attention it has paid to this subject, and the most sanguine could not have hoped for greater success than has attended its exertions. It is earnestly to be wished that the example may be followed by His Majesty's Ministers here."

Sir Samuel Romilly concluded, by moving, that an humble address be presented to His Majesty, That His Majesty would be graciously pleased to give directions for carrying into execution so much of the Act of the nineteenth* of his reign, entitled, "An Act to explain and amend the Laws relating to the Transportation, Imprisonment, and other Punishment of certain Offenders," as relates to Penitentiary Houses; and for carrying into execution the Act of the 34th† of his reign, entitled, "An Act for erecting a Peniten-

injustice. An old law was found, which allowed the exile to be transmuted for an equal period in confinement. There were discovered *sixty* females in cells ten feet square, *ten* in each cell. These women were put into Penitentiaries. They became industrious as they felt the enjoyment of light and air and food. As they felt the pleasure of honest industry, they grew diligent and honest. Work could scarcely be supplied sufficient for their new activity, and at the return of every week there was an additional evidence of the signal power which encouragement and care had in reforming the most abandoned, and cheering the most unhappy. —*Parliamentary Debates, May 9th*, 1810.

* C. 74. † C. 84.

tiary House or Houses, for confining and employing Convicts."

The Motion was most ably supported by Mr. Abercrombie, Mr. Wilberforce, and Mr. Whitbread.—Mr. Secretary Ryder, Mr. Bathurst, and the Solicitor General, though professing an entire concurrence in the general principles laid down by Sir Samuel Romilly, were nevertheless adverse to his Motion, on the ground of the advanced period of the Session,—of the inefficiency and defects of the 19th and 34th of the King,—and of the advantages which would result from a further delay and consideration of the subject. The hulks, though defective, were by no means, it was asserted, in such a state as they had been represented to be, and were capable of being improved by proper regulations. The objections either to the hulks or to transportation were not such as called for so much precipitancy. They therefore thought it better to put off the measure until the next Session, when it might be referred to a Committee.

Sir Samuel Romilly rose to speak in reply. "Although there seems to be but one opinion" (he said) "as to the principle of the subject under discussion, I trust that the House will permit me to trespass once more on its patience, while I advert to some of the objections which have been urged against my present Motion. I am anxious, also, to remove an unfavourable impression, which

appears to possess the minds of some Gentlemen, in consequence of what has been said, as to the late period of the Session, at which this subject is brought forward. After the course of conduct which I have pursued, with regard to the present question, I did hope, that the House would have acquitted me of any disposition to take it by surprise. It may be recollected, that I made a Motion similar to this much earlier in the present Session, for the avowed purpose of putting His Majesty's Ministers in possession of what I had in contemplation, and that I afterwards withdrew that Motion in order to enable them, if they wished, to inquire farther into the subject, before the House was called on to decide upon it. It has since been put off from time to time for the convenience of the Ministers, or because other matters, thought to be more important, have occupied the attention of the House. Under these circumstances, I certainly cannot accede to the proposal of again withdrawing my Motion until the next Session, for the purpose of having the subject then referred to a Committee. In the first place, I cannot see what a Committee is to do. Is it to inquire into the effects of the Penitentiaries where they have been tried? What necessity can there be for this inquiry, when it appears to be the unanimous opinion of the House, that they would be attended with good effects?

"It is said, that improvements might possibly

be made in the plan of Penitentiary Houses; that in a Committee, a great deal of information might be collected on the subject; and that by this mode of proceeding, we shall gain time in furthering our object. But ought a plan so matured, and stated to us with such details as that which we have before us, to be deferred until a Committee have examined and reported all the different ideas which may be suggested on the subject? Ought it, in fact, to be laid aside for so long a period, because there is a chance of some possible improvement being made upon it? The present plan is the result of long and mature consideration. It had been suggested and considered for several years before the Bill was passed. It was the work of men who had devoted a great part of their lives to the subject, and after they had advanced so far as to get their plan embodied in an Act of Parliament, we are now desired, in a future Session of Parliament, to begin again, and to send the subject for consideration to a Committee. The Committee, after mature reflection, and much time spent, may make their report; they may recommend a plan which may appear to them more perfect than this; in the course of some years we may, perhaps, hope to have another Act passed; and when that Act has remained unexecuted as this has done, we shall be just where we now are, and some Member may hereafter be requiring the House as I now

am, to desire the execution of the Law it has made! And this course is recommended to us as the means of gaining time! I cannot but think that it would occasion a great loss of time. If the Address is carried, and effectual steps are taken for erecting the Penitentiary Houses, still there will be time enough before they are completed to pass any Acts in the course of the next Sessions, which may be thought to improve the system. But my learned Friend, the Solicitor General, has suggested that the Committee might at the same time inquire into the state of our gaols, and the improvements to be made in them. I cannot but think that by pursuing these different objects at the same time, we are likely to accomplish neither of them; and after a great deal of time shall have been occupied, the matter will, from our attempting too much at once, be likely to fall again into neglect, and to be forgotten, as has happened before.

"Notwithstanding what has been said of the state of the prisoners on board the hulks, I am still convinced that the evils which attend that species of punishment, far surpass any advantages that may be supposed to result from it. Where prisoners of all descriptions are confined together, and where, as is now the case, Boys of fifteen or sixteen are compelled to be the companions of the most depraved and profligate of mankind, it is impossible that the worst consequences

should not follow to the unhappy wretches who are subjected to this punishment, as well as to the community. With respect to solitary confinement, I entirely concur in what has been said of it by the Member for Yorkshire. I have always thought that complete solitude, and without occupation of any kind, was much too severe a punishment to be inflicted for any offence. Indeed one cannot but be shocked, in reflecting upon the levity with which such punishments have of late years been inflicted in this country, without any considerations of the effect which they might have upon the temper or disposition of the unhappy creatures who were doomed to endure them. I have myself known instances, some few years ago, of persons, who for the offence of uttering seditious words, were sentenced at courts of Quarter Sessions, to two years of solitary imprisonment.

"It has been justly observed, that the best punishments are those which inflict the least suffering upon the convict, but inspire the most terror in others. The punishment of solitary imprisonment reverses this rule, and no uneducated and unreflecting individual can conceive, beforehand, all the horror of that new mode of existence, by which he is suddenly cut off from all the rest of mankind, and left in a state of total silence and seclusion. In many instances it is said to have produced despair and madness. It is a punishment too easily abused, to be safely

left to the discretion of Justices of the Peace. Solitary confinement, as a mode of compelling the more hardened and daring offenders to submit to the rules and discipline of their prisons, may, upon occasion, and for very short periods, be advantageously resorted to; but, to make solitude itself a punishment, accompanied with idleness, and that for uncertain and indefinite periods of time, cannot, in my opinion, under any circumstances, be justified.

"The House will not, I hope, think, that I am trespassing improperly on its patience, if I take this opportunity to mention, that of late, persons have been authorized by law in this country, to inflict solitary imprisonment, as a punishment, where a very slight, or perhaps no offence at all, may have been committed. An Act of Parliament has recently passed through this and the other House of Parliament, as a private Bill, and without the attention of any Member being called to it in any one of its stages. This is the Lambeth Poor Bill, by which power is given to any one Churchwarden or Overseer of the Poor, to punish any of the paupers who may be maintained in the workhouse, for the offence of profane cursing and swearing, for abusive language, for disobedience to the reasonable commands of any person put in authority over them, or for any other misbehaviour, with corporal punishment, or with confinement for any time not

exceeding forty-eight hours. After the Bill had passed, its injustice was discovered, and a Right Hon. Friend of mine (Mr. Sheridan) gave notice of a Motion on the subject, which, from probably not knowing how the evil could in the same Session be remedied, he has now, as I understand, abandoned.

"But, however unjust this may be, it is not the first time that the Legislature has been guilty of such injustice. Many Acts have passed of late years, by which this species of penal law has been enacted for individual parishes, varying, indeed, in their circumstances according to the different fancies of the persons who may have drawn the different Bills, but all in the same spirit. In some of these Bills, the power of solitary imprisonment, or corporal punishment, is given to parish officers; in some, to guardians of the poor; in others, to the keepers of workhouses. Many of them even go so far as to leave the term of the imprisonment unlimited, and wholly dependent on the discretion of those who are thus invested with an authority to inflict it. In the Hampstead Parochial Act of the 39th and 40th of the King, power is given to the master or mistress of the workhouse to punish any person there maintained, who shall be guilty of profane swearing, or of using any abusive or improper language, with solitary confinement, and for an unlimited period, and without any other control than that it is to be subject to

the approbation of the guardians of the poor. If this were confined to the offence of swearing, the enormous severity of it could not fail to strike every one. For the same misdemeanor, a gentleman is punished with a fine only of five shillings, and a poor wretch, who has been without education or instruction, and has been compelled by his necessities to associate with those amongst whom these depraved habits generally prevail, is to be punished with the most severe penalty of solitary imprisonment. But what is to be said, when this injustice is extended so far, that what, in the judgment of the master of a workhouse, may be deemed abusive or improper language, or misbehaviour, no matter to whom, whether to some servant of the house, or to an inmate like himself, with whom he may happen to have quarrelled, is to expose him to such severity?

"If this is to be the state of our penal law, enacted only for the most friendless and unprotected part of the community, at least it ought to be done by public Statutes, to which the attention of this House would be drawn. This evil appears to me to be one of sufficient magnitude to occupy the most serious care of this House, and I shall probably in some future Session bring it distinctly under its consideration. The remedy most likely to be effectual, would be probably to come to a resolution, that no Bill should pass this House, containing any clause, giving power to

parish officers, or guardians or trustees of the poor, or governors or masters of poor houses, to inflict corporal punishment, or imprisonment, which had not first been submitted to a Committee of the whole House. This, however, must be the subject of future consideration, and I hope that the House will not think that I have improperly wasted its time in noticing what I cannot but consider as the wrongs of those who have such imperfect means of making their sufferings known.

"To return, however, to the immediate subject of this debate; let me conjure the House to reflect how much time has passed since the Legislature enacted that Penitentiary Houses should be erected, and that although the ground for erecting them has been bought at a great expense to the public, nothing effectual towards establishing them has yet been done; that the want of them in the mean time is every day more sensibly felt; that other punishments are found to be ineffectual; that crimes have become more frequent, offenders more daring and desperate, public morals more outraged, and the laws more despised; let me conjure the House to reflect on these things, and then to say whether we ought to persevere in the system which has hitherto been followed, and whether we ought to defer, even though it be only to another Session, a measure from which so much good is to be expected."

The House then divided:

Ayes - - - - - - - - - - -	52
Noes - - - - - - - - - - -	69
Majority against the Motion - -	17

Mr. Bathurst then moved the following Resolution, which was carried without opposition: "Resolved, that this House will, early in the next Session of Parliament, take into consideration the means of most beneficially carrying into effect the Acts of the 19th and 34th years of His present Majesty's reign, for the establishment and regulation of Penitentiary Houses."

THE NAVIGABLE RIVER ROBBERY BILL.

Saturday, June 8th, 1810.

The Order of the Day for the third reading of the Navigable River Robbery Bill having been read, Sir Samuel Romilly rose and spoke as follows:

"Sir, the House may very well suppose that it is not my intention to proceed with this Bill at the present moment, or to provoke much discussion upon a day which is seldom devoted to the despatch of public business. I rise, therefore, to

move, that this Bill be read a third time on Wednesday next. As the other business, however, which stands for that day, may make it impossible to proceed on this, and as the Session is very near its close, and no opportunity has hitherto been afforded me of stating the grounds upon which this Bill has been introduced into the House, I shall avail myself of this occasion to say a few words upon that subject.

"The object of this Bill is to repeal an Act of Parliament passed at the close of the last reign, which made it a capital offence for a man to steal property on board ships or other vessels on navigable rivers, or upon wharfs or quays, to the value of forty shillings. I do not recollect, and I have not been able, from all the inquiries I have made, to hear of a single instance in which this Act has been carried into execution. I do not take upon myself to assert that it never was executed; it is very probable that soon after it passed it was in some instances enforced, but I have not met with any one who remembers such an instance. There have, indeed, been but few persons who have of late years been even committed for trial under this Act; few, I mean, when compared with the number of crimes actually committed. In the year 1802, only nineteen persons;—in 1803, twenty-four;—in 1804, only six;—in 1805, the same number;—in 1806, only nine;—and in 1807, only five.—This appears from the re-

turns in the Secretary of State's office. But though none have of late years been executed for this crime, and so few have been charged with it, it is notorious that the crime had become extremely common, and was thought not many years ago to be greatly increasing. It was for the express purpose of checking the increase of this description of crime that a Police Office was established at Shadwell; and the Act under which it was established, the 39th and 40th Geo. III. c. 87, purports to have been passed for the more effectual prevention of depredations on the river Thames.

"The crime has, however, I believe, within the last few years, been much less frequent than before; but this improvement is to be ascribed to the erection of the wet docks, which have made the commission of the offence more difficult, —and not to the existence of a law holding out a punishment that never is inflicted. That prosecutions on this Act have not been more frequent, is not surprising, since in this instance, as well as in those of stealing in shops and dwelling-houses, it depends in a very great degree upon the party robbed, whether he will prosecute for a capital offence or for a simple larceny. Prosecutors in general cannot persuade themselves to adopt the sanguinary spirit of the Statutes; but it must be confessed to be a most extraordinary state of the law of any country, that it should depend upon the

pleasure of a private individual, who is not responsible to any one for his conduct, whether a public crime shall be punished with death, or with a much less severe penalty. The general grounds, therefore, upon which this repeal is submitted to the House are, that the present punishment is much too severe for the offence; that a Law, which is not and cannot be executed, ought not to exist; and that this Law has not even the recommendation of any antiquity or experience in its favour. Passed just before the commencement of the present reign, and never, or in some very rare and unheard-of instances enforced, it may be truly stated to have been a most unsuccessful experiment in legislation.

"This is certainly not an occasion of which I could with propriety avail myself to answer all the objections which I have heard stated in another place to the principle of this Bill, and of the two others which were introduced at the same time into this House; but one of these objections appears to me to be of a nature, that I ought not to suffer even this the first opportunity that I have had, to pass by without animadverting on it. It has been observed, that two years ago an Act was passed to take away the punishment of death from the offence of stealing, to the amount of a shilling, privately from the person, and that the consequence of this mitigation of severity has been greatly to increase the offence. This it has been

said, is the observation of the Judges; and it is added, that in consequence of this observation, they disapprove of the alterations which have been lately projected. Now, there certainly can be no doubt, that if the crime has increased, and that increase has been caused by an alteration of the law, that alteration must have been pernicious; but although the fact of the crime having increased since the alteration of the law should be clearly established, it does not necessarily follow that the alteration is the cause of that increase. Indeed, at the very same time and in the same place in which it was stated that the crime of stealing from the person had within the last two years increased, it was also stated, that the crime of stealing privately from shops had, within the same period, equally increased. But with respect to the latter offence, there has been no alteration of the law! It must be to some other cause, therefore, that the fact, should it exist, is to be ascribed; although it is evident, that if the Bill lately rejected by the Lords had passed two years ago into a Law, the supposed increase of the offence would have been represented as the obvious and indisputable effect of a cause, which, it is now certain, never existed.

"But how is it ascertained that the crime of picking pockets has increased since the repeal of the capital punishment? The Judges, it is said, have observed, that it has increased. Now, the

experience and observations of the Judges, may safely be relied on to prove the fact, that there have been more prosecutions for the offence, but not that the offence has been more frequent. The Judges hear of the crime only when it is prosecuted; from them we may learn the number of prosecutions, not the number of offences. But though an increase of offences would be an evil, the mere increase of prosecutions is a great good. It is, indeed, one of the very benefits which they who recommended the alteration of the law pointed out as likely to result from it. It was said, that in the then state of the law, with a punishment so much more severe than the offence seemed to deserve, men who had suffered from the crime could not be induced to prosecute for it, and the complete impunity which was the consequence necessarily tended to augment such crimes. Repeal, it was said, the capital punishment, and prosecutions will multiply. What was predicted has happened. The law was repealed, and prosecutions have increased. The experiment so far, has been completely successful; and yet those who are averse from every thing which they consider as innovation, immediately exclaim, that a mitigation of the law has given encouragement to new offenders. Men, who would otherwise have escaped all punishment, have suffered transportation or imprisonment; and this has been strangely called an encouragement to commit crimes.

"To allege the increase of prosecutions as a proof of the inexpediency of the new law, is a judgment not unlike that, which Frederick, king of Prussia, pronounced upon the effect of some of his own regulations. He had published an edict, by which he had greatly diminished the expense of law proceedings. The immediate effect of that beneficial measure was considerably to increase the number of lawsuits. Persons, who had been before obliged to submit to injustice, because the expense of obtaining redress was beyond their means, were enabled to lay their complaints before the proper tribunals. But this, which was the strongest proof of the wisdom of his regulations, was considered by the King as an evil which had resulted from them, and he adverts to it, as such, in a subsequent edict, in which he seems to repent the imaginary mischief and the real good which he had done, and, as a remedy for it, he adopts the strange expedient of commanding, by his royal authority, that every litigation, whatever be the subject, and however intricate and involved in difficulties, should be brought to a termination within the period of a year. Just of the same kind is the evil which is supposed to have resulted from the late change in our Criminal Law. That the law thus violated, had so long remained unexecuted, is surely a very extraordinary effect to refer to, in proof of its excellence.

"But though I can see defects in our Statutes, and would gladly correct them, it is very unjustly that I have been represented, as not holding our laws in sufficient veneration. It would, indeed, be extraordinary if I, who have passed my life in the study or the practice of the law,—who owe what little consideration I enjoy in society, to the legal knowledge which I am supposed to possess, and who must look to the same source for whatever honours or advantages I may be ambitious hereafter to attain,—it would indeed be extraordinary if I were desirous of weakening the respect which is due to our laws. My respect and admiration of our judicial system are not the weaker for being the result of a careful examination. The same attentive consideration which has led me to the discovery of supposed defects, has made me sensible of excellencies which are, perhaps, unobserved by those who are loudest in declaring that all is excellent; and I cannot admit, that I deserve the reproach of being an inconsiderate innovator, because I have attempted to remove some imperfections in our law, and to render it still more deservedly than it is at present, the object of universal admiration."

Sir S. Romilly concluded, by moving, That the Bill be read a third time on Wednesday next; which was ordered. When that day arrived, however, the other business before the House made it impossible to proceed on it; and it being evident

that there was not time to carry the Bill through the other House, it was given up, and, in a few day afterwards, the Parliament was prorogued.

STATE OF THE NATION—KING'S ILLNESS.

December 20th, 1810.

The House having resolved itself into a Committee, the Chancellor of the Exchequer moved the three following Resolutions:—1st, "That it is the opinion of this Committee, that His Majesty is prevented by his present indisposition from coming to his Parliament, and from attending to the public business; and that the personal exercise of the royal authority is thereby suspended.

2dly, "That it is the opinion of this Committee, that it is the right and duty of the Lords Spiritual and Temporal, and Commons of the United Kingdom of Great Britain and Ireland, now assembled, and lawfully, fully, and freely representing all the estates of the people of this realm, to provide the means of supplying the defect in the personal exercise of the Royal authority, arising from His Majesty's said indisposition, in such manner as the exigency of the case may appear to them to require.

3dly, "That it is the opinion of this Committee, that for this purpose, and for maintaining entire the constitutional authority of the King, it is necessary that the said Lords Spiritual and Temporal, and Commons of the United Kingdom of Great Britain and Ireland, should determine on the means whereby the Royal assent may be given in Parliament to such Bill as may be passed by the two Houses of Parliament, respecting the exercise of the powers and authorities of the Crown, in the name and on the behalf of the King, during the continuance of His Majesty's present indisposition."

After the two first Resolutions had been carried, a long debate ensued upon the third, in which Sir Samuel Romilly delivered his opinions to the following effect. "I shall trespass upon the attention of the House very shortly. To me it appears, that the Resolution now under the consideration of the Committee, contains an absolute contradiction of the Resolutions which have preceded it. We have already resolved, that the personal exercise of the Royal authority is suspended by the indisposition of His Majesty, and that it is the right and duty of the two Houses of Parliament to supply the defect; and yet we are now proceeding to state the necessity of procuring the Royal assent to any Bill which may pass the two Houses for that purpose,—an assent which we are all sensible, and which we have even declared to be out of His Majesty's

power to give! Under the present circumstances, how, I wish to know, are we to devise any means of getting the assent of His Majesty but by the grossest and most palpable fiction? Is the will of the Lords and the Commons the will of the King, or how can any such construction be given to it? My Right Hon. Friend (the Chancellor of the Exchequer), in proposing the present Resolutions, has relied upon one precedent, and upon one precedent only: he has said nothing at all respecting the principle on which the two Houses of Parliament have taken upon themselves to legislate; and not only to legislate, but to send forth their acts as those of the three concurring branches of the Legislature. The precedent to which my Right Hon. Friend has appealed, I can look upon in no other light than as a fraudulent trick, altogether inconsistent with the open and manly manner in which every act of legislation should be performed. In matters of common life, what would be said of a set of men joining together to make a contract for a person in a state of insanity, and employing a Solicitor to affix the invalid's seal or signature to such a deed? Should we not say that the instrument was a gross forgery and imposture, and absolutely null and void? The application of such a case to the present is easy and obvious.

"Undoubtedly there is a distinction between the natural and the political capacity of the So-

vereign. From the latter it arises, that in his Courts of Justice all writs and acts proceed in his name, though his presence *there* is by no means necessary. But *here* we are extending the political capacity of the Sovereign to cases of a very different nature,—to acts of legislation, for the validity of which, his assent, either by person or by commission, is absolutely essential, and cannot be dispensed with. In fact, if the two Houses of Parliament can thus proceed to one act of legislation, why not to others? Why should they not declare war or peace,—lay on embargoes,—and do all those other acts, which, according to the principles of the Constitution, have been considered as competent to the Sovereign alone? What is to prevent them from doing all these things, and then saying, that it is the pleasure of His Majesty, because the two Houses have thought proper to command the sanction of the Great Seal? Such are the powers which the two Houses are called upon to arrogate to themselves, in despite of every recognised principle of constitutional law, and in defiance of a positive Act of Parliament, which makes such a declaration liable to all the penalties of a *premunire!*

"And what, after all, is either the necessity or advantage of such a proceeding? Is it to render valid the restrictions and regulations under which it is the intention of Ministers that the Regency should be held?—Admitting, for the sake of ar-

gument, that these are necessary, I can see no reason why they may not be introduced into an Address with as much propriety as into the proposed Bill. The very acceptance of the Address would in itself be also an acceptance of the conditions with which it might be accompanied."

Sir Samuel Romilly concluded, by expressing, in the strongest manner, his dissent from the proposed Resolution. After a long Debate the House divided—

Ayes - - - - - - - - - - -	269
Noes - - - - - - - - - - -	157
Majority in favour of the third Resolution - - - - -	112

THE REGENCY.

January 1st, 1811.

The House having resolved itself into a Committee for taking into further consideration the state of the nation, the Chancellor of the Exchequer moved the following Resolution: "That it is the opinion of this Committee, that the care of His Majesty's Royal person during the continuance of His Majesty's illness, should be com-

mitted to the QUEEN's most excellent Majesty; and that Her Majesty, for a time to be limited, should have the power to remove from, and to nominate and appoint such persons as she shall think proper, to the several offices in His Majesty's household, and to dispose, order, and manage all other matters and things relating to the care of His Majesty's Royal person, during the time aforesaid; and that for the better enabling Her Majesty to discharge this important trust, it is also expedient that a Council should be appointed to advise and assist Her Majesty in the several matters aforesaid; and with power from time to time, as they may see cause, to examine the physicians and others attending His Majesty's person, touching the state of His Majesty's health, and all matters relative thereto."

To this an amendment was proposed by Earl Gower, omitting that part of the Resolution which commenced after the words, "Queen's most excellent Majesty," and substituting for it, "together with such direction of His Majesty's household, as may be suitable for the care of His Majesty's Royal person and the maintenance of the Royal dignity."—After the amendment had been moved, and supported by Mr. H. Martin and Lord Milton, and opposed by Mr. Johnstone and Mr. Stephen; Sir Samuel Romilly rose, and spoke to the following effect:

"Sir, anxious as I am to deliver my opinions

on this most important subject, I should not have obtruded myself upon the attention of the House at the present moment, but for the injustice which has been done to an Hon. and Learned Friend of mine (Mr. H. Martin) who bore an early part in this debate. He has been charged with having himself treated, and with having counselled this Committee to treat, the personal feelings of his Sovereign, as matters altogether unworthy of consideration or regard. This imputation is a gross mistatement of my Learned Friend's arguments. No such opinion has been expressed by him; no such inference can be deduced from any of his observations. He has, indeed, most justly and constitutionally animadverted upon the perpetual and invidious allusions, which have been made to what may possibly be His Majesty's private feelings on his recovery, in exclusion, as it seemed, of every other argument founded upon a consideration of the case in a general and national point of view. On common occasions, it would be, in the highest degree, irregular and unparliamentary to employ the name of His Majesty for the purpose of influencing the proceedings of this House. In the present case, although it may be impossible to abide strictly by the general rule, still it is equally irregular to dwell so exclusively on the probable feelings of His Majesty, as an argument to control the decision of the House.

"Sir, it has been assumed, and, in my opinion, most unfairly assumed, by the Gentlemen opposite, that a power in the Regent to dismiss or change the Household is tantamount to the very dismissal itself,—that as soon as the Prince has the right to discharge, he will discharge, wholly unrestrained by all considerations for the feelings and wishes of his Royal Father! Can any thing be more injurious to the character of the illustrious Personage, who has been deemed worthy of being the Representative of the Sovereign? Can any thing be more unjust to His Majesty than to represent him as entertaining such suspicions?—As to the bare possibility of power being abused, how is it to be avoided? What security is there against an abuse of power in the hands of the Queen? Or upon what principle do we commit without objection the care of the Royal Person to Her Majesty? *(Loud cries of Hear! hear!)* —Our confidence, it is said, is founded on the *conjugal* affection of the Queen!—And is there none to be reposed in the *filial* affection of the Prince? Or having that confidence in His Royal Highness, are we to presume that his first act will be to diminish the comforts, and to wound the feelings, of his aged and afflicted Father?

"There is another most shameful misrepresentation of the presumed feelings of His Majesty, which it is almost impossible to arraign in appropriate terms of condemnation. It has been said

that no circumstance is so much calculated to depress His Majesty on the resumption of his authority, as the thought of his faithful servants being dismissed,—his private comforts abridged,—and his personal predilections counteracted! Is this a view of the subject which tends to exalt the character and dignity of the first Magistrate? Is this an argument which does justice to His Majesty's paternal regard for his People? Are those the Friends of the Sovereign and the Throne, who can contend that in a case, where the power of peace or war,—the management of our naval and military resources,—the control of our dearest and most important interests, are involved,—that in a case like the present, the great object of Parliament, in its duty to His Majesty, is to consider how the power of the Regent shall be limited as to the direction of the Royal Household? That compared with such a consideration, it is of little consequence in the eyes of His Majesty, whether our political relations shall be observed,—whether war shall be ably conducted, or peace ignominiously concluded,—whether the People shall be happy or unhappy;—that all these points, as they relate only to the nation, are of inferior consideration, and may be submitted, without control, to the discretion of the Regent,—but that the disposition of the Royal Household,—the possible removal of a few Lords of the Bedchamber, is a circumstance of that vital im-

portance to His Majesty's feelings, that it will prey upon his mind, and retard, if not altogether prevent, His Majesty's expected recovery! *(No! no! from the Ministerial Benches.)* What other insinuation, I repeat, can the arguments of the Hon. Gentlemen opposite be supposed to convey,—what conclusion can possibly be drawn from their observations, but that all the important interests of the Country,—all the consequences resulting from a supposed improper system of Government,—all the evils of an ill-administered Regency, are not calculated to affect or distress His Majesty in any degree, so much as the removal of a few Lords of the Bedchamber. Such, I repeat, have been the arguments of Gentlemen, professing themselves, beyond all others, to be the friends of their Sovereign! Such is the manner in which His Majesty's name has been introduced, and his feelings misrepresented, for the irregular purpose of influencing the proceedings of this House! Sir, it is absurd to state that the Prince cannot safely be intrusted with the regulation of the Household, and the power of dismissing a few Lords of the Bedchamber; at a time when he is deemed competent to wield all those powers, on the administration of which, the security and honour of the Crown, and the dearest interests and rights of People, alike depend. To build such a proposition on the presumed feelings of the King is most improper, and well merits that reprobation

which my Learned Friend (Mr. H. Martin) has been so unjustly censured for bestowing upon it.

"Having said thus much in reply to what has fallen from the opposite side, I will now proceed to offer a few observations more immediately connected with the subject under the consideration of the House. There are two questions: the first as to the right of the two Houses to impose restrictions on the Regent; the second, as to the expediency of doing it. Upon the first, I am free to confess, that I entertain great doubts as to the right of the two Houses to impose restrictions on the exercise of the Royal Authority. *(Loud cries of Hear! hear! from the Ministerial Benches.)* I shall repeat, that I have very great doubts, whether the two Houses possess any such right. In viewing the present question, this House must consider not what PARLIAMENT can do by Bill, but what the two HOUSES of Parliament are able to effect by their respective Resolutions. But the course which the House is now pursuing, is wholly inconsistent with the Resolutions which it has adopted. The Resolutions, like those of 1788, assume a right on the part of the two Houses of Parliament to supply the deficiency in the Royal Authority. This right is founded upon the necessity of the case. The Constitution having made no provision for its exercise, it necessarily devolves upon the estates of the realm, as the only legitimate organ of the people. But the *necessity*

which gives, at the same time limits the exercise of, this right. It allows the two Houses to supply the defect of the Royal Authority, but not to substitute any thing else in its room;—it sanctions them in restoring the *old*, but not in fabricating a *new* Constitution.

"The House has not only declared it to be its right, but has asserted it to be its duty, to supply the defect in the exercise of the Royal Authority. How is the House prepared to perform this duty? By depriving the Chief Magistracy of its usual powers and capacities? By suspending its ancient and legitimate Prerogatives? By appointing a Regent, with the sole power of giving his assent to certain measures of the two Houses of Parliament? Is this to supply the deficiency which has been occasioned by the illness of the Sovereign? Is this to discharge that duty which the Resolution of this House has declared to be incumbent on the remaining branches of the Legislature? A Right Hon. Gentleman (Mr. Bragge) has said, that the two Houses have not, in the present emergency, a right to delegate to the Regent more of the Royal Authority than the actual exigency of the case shall require. He has not, however, condescended to point out those particular powers of the Crown which are unnecessary for the maintenance and well-being of the Government. In all my study of the British Constitution, I have not been able to understand that

there are any parts of the Regal Power unnecessary, and separable from the Crown. If such exist, they ought to be taken away altogether. They are as unfit to remain in the hands of a King as to be committed to those of a Regent: for all power is an abridgment of the rights of the People, and can only be justly held as a trust for their benefit.

"It is a delusive and unjust way of considering the question of restrictions, to estimate any single branch of the Prerogative as standing by itself, and disconnected with every other. For the proper exercise of the one, it is often necessary that the Crown should possess the others. The power of creating Peers, for example, might sometimes be necessary to enable the Crown to fill the great offices of State with persons most adequate to the duties of such situations. It has been very generally reported, whether truly or not the Chancellor of the Exchequer best knows, that when the Chief-Justiceship of the Common Pleas was last vacant, the Gentleman, whom His Majesty had selected, as most competent, from his talents, learning, and integrity, for the duties of that office, refused to accept it, unless accompanied with the honour of a Peerage. In this particular instance it was not deemed expedient to purchase the services of this Gentleman at such a price. But supposing the contrary,—supposing that it had been thought for the advantage of the public to confer the desired

Peerage, but that the person exercising the functions of Royalty had not the power to grant it,—in such a case, he would have been obliged to appoint to a high judicial office, a person, who, in his judgment, was not the best qualified to discharge its duties. It may be doubted by many, whether it is for the advantage of the public that Judges should be created Peers; but this is not a time to discuss that question. It is sufficient that of late years it has been very usual,—and surely, if a person in a judicial situation be allowed to aspire to that distinction, it is much better that it should originate with his office, than that it should be reserved as an ultimate and contingent reward for the services which he may perform. As to any exception in this restriction respecting the Peerage, on the ground of merit, and in favour of the naval or military, or any particular species of service, it would be most objectionable. Its only tendency would be to make separate classes in the Peerage, by holding up some as indebted for their honours to their own merits, and others to the capricious favour of the Crown. The public good ought to be the only object in view in all creations of Peers; but to confine these honours to any particular species of merit will only tend to introduce a new and most invidious distinction, which can be but little conducive to that end. All that there remains for the two Houses of Parliament to do at

the present moment, is to restore the Constitution, and the whole Constitution.

"With respect to the supposed Precedent of 1788, which has been so frequently appealed to, and so much relied on, I must remind the House that, in fact, there is no such Precedent. Though a particular proceeding was allowed in one House, it did not receive the sanction of the other; it cannot therefore be argued upon, as if it had been the concurrent act of the two Houses of Parliament. In the last Session I proposed a Bill on the subject of the Criminal Law. After passing this House without opposition; after being received in the Lords almost without objection, it was finally lost in its very last stage through that House. Now, had any accident prevented the Lords from coming to this decision, I might just as well have cited the authority of the Legislature in favour of that measure, as the Chancellor of the Exchequer can now bring forward the unfinished proceedings of 1788, as a complete and established precedent for the conduct of Parliament on the present occasion.

"There are other Gentlemen, however, who rest that Precedent not so much upon the presumed ground of its being an act of the Legislature, as upon the high authority of the person from whom it proceeded. I confess that I am not disposed to worship the memory of Mr. Pitt. I know how

many persons in this House have lived in habits of intimacy with him, and are almost idolaters of his character and talents, and I should therefore lament to say any thing offensive to their feelings; but whilst I acknowledge the great and splendid talents of Mr. Pitt, I am not one of those who think that those talents have established his claim to the character of a GREAT MAN. *(Loud cries of Hear! hear! from the Ministerial Benches.)* If this assertion is so extravagant, as to provoke the derision of the Gentlemen opposite, let them find some better mode of exposing its absurdity. Let them condescend to point out those great and signal measures of public benefit, by which that Minister has enlarged the blessings, and lessened the privations, of any portion of His Majesty's subjects. For my own part, I have looked in vain among the splendid acts of Mr. Pitt's life for any such monuments to his character as a Statesman. I must be pardoned, therefore, if I do not attach all that weight to the proceeding of 1788, which some Gentlemen have demanded, for the sake of its Author. The only object of Mr. Pitt upon that occasion was to retain power, or, if compelled to relinquish it, to transmit it as mutilated and curtailed as possible, to his successors. He laid hold of an expression which had inconsiderately fallen from his political Antagonist in the warmth of debate, but which had never been insisted on, and made it the subject of a Resolution for the

mere purpose of his own personal triumph in the House of Commons. The proceedings in Parliament, at that day, afford us no Precedent. They exhibit only a struggle for power, in which Mr. Pitt was the principal actor.

"The question which the Gentlemen opposite seem desirous of deciding, is, with how small a portion of the regal authority the Executive Government may be carried on. Is this a moment for such experiments? Is this a time, either for stripping the Representative of the Sovereign of the accustomed splendour of Royalty, or for creating an additional Establishment, and thus marking the first exercise of the Regent's authority by new burdens on his distressed People? The Chancellor of the Exchequer has said, on a former night, that he could not conceive how the Restrictions to be imposed upon the Regent could diminish the Royal Authority, because he apprehended, that on all sides would be felt the impropriety of entertaining any proposition tending to affect the Royal Prerogative during the unfortunate suspension of its exercise by our afflicted Sovereign. I confess that I do not comprehend the exact meaning of the Right Hon. Gentleman. If, however, he means that during the existence of the Regency there is, as it were by common consent, to be a suspension of all those measures of Reform, which from time to time have occupied the public attention, and to which the People

look with so much anxiety,—if it is meant that all these measures are to be suspended, because they may be conceived to affect the Royal Prerogative, and that the People, though they may have their burdens increased, must not hope to see their grievances redressed, I will ever protest against so unconstitutional a doctrine. I shall ever consider such a Restriction as the most fatal that can be imposed upon the Regent.

"I should be averse from making an experiment upon the Constitution, in the person of any Regent; but I am more particularly averse from doing it in the person of one, who is the Heir Apparent, and destined, perhaps, at no distant day to sway the Sceptre of these Realms. The question may then naturally arise of why, if he can govern the Country with such limited powers as Regent, he may not do so with the same limited powers as King? Are these the times in which it is prudent to invite such inquiries, and to hazard such experiments? No one can reflect upon what he has seen passing in the world without feeling the probability, that the reign of His Majesty's Successor will be marked with important events. Considering with what dangers he may be surrounded, and in what difficulties he may be involved, it is most important for the Country that he should ascend the Throne with every possible advantage,—with all the strength

which he can derive from the respect and affection of his People. That he may do this, must be the wish of every person who has the good of his Country, or even his own personal interest, at heart;—it must be the wish of every friend of the Prince,—of every friend of the King,—and above all, it must be the wish of the King himself. Nothing can be nearer to His Majesty's heart, than that the glories of his own reign may be far surpassed by those of his Successor, and that his Son may, more than himself, be a blessing to his People. How then, recollecting this, can it be thought advantageous to the Prince,—to the King,—or to the Country, to pursue the course which has been recommended by Ministers to this House? How can it exalt the character of the Prince or the strength of the Throne, that the People should be accustomed to behold His Royal Highness exercising authority over them as a kind of Half-King, with curtailed prerogatives, and diminished splendour,—fettered and embarrassed with Restrictions, which will import the strongest distrust on the part of the two Houses of Parliament, and their firm belief that he is not a person to whom the powers of Royalty can with security be confided?—Let me entreat the House to reflect upon the injurious consequence of its proceedings; let me conjure it not to weaken, by countenancing these unjust and ungenerous suspicions, the affec-

tions and respect of the People towards a Personage, to whom they may be one day bound in the allegiance of subjects to their lawful King."

After a Debate, which was protracted to a late hour, the House divided, when there appeared

For the Amendment - - -	226
Against it - - - - - - -	213
Majority for the Amendment	13

MR. PITT.

January 2d, 1811.

Mr. Canning complained of an attack on the memory of Mr. Pitt, "as unjust as uncalled for, and as singular as either," which he stated to have been made by Sir Samuel Romilly on a preceding night. He had repressed his feelings, strong as they were, at the moment, and had resolved to abstain from any animadversion upon the Learned Gentleman's proceeding;—but the Learned Gentleman's example had been contagious; and it appeared to be a measure of Party to run down the fame of Mr. Pitt. He could not, therefore, answer it to his conscience, or to his

feelings, if he suffered repeated provocation to pass without notice. Mr. Canning then proceeded in a long and laboured strain of panegyric to eulogize the memory of his deceased Friend, and asked, who by taking the measure of his own mind, would pronounce Mr. Pitt not to have been a great man? He defied the ingenuity of Sir Samuel Romilly to frame any definition of the character of a great man which should not apply to Mr. Pitt,—to trace any circle of greatness from which Mr. Pitt should be excluded!—As soon as Mr. Canning sat down, Sir Samuel Romilly stood up, and replied to the following effect:

"I do not rise to attempt an answer to that blaze of zeal which, after the Right Hon. Gentleman's silence of yesterday, and after twenty-four hours of calm consideration, has so unexpectedly burst forth; but merely to defend myself against a most unjust attack which he has thought proper to make upon my conduct. The Right Hon. Gentleman, notwithstanding what he has been pleased to say, perfectly well knows that I had not the merit, as he has been pleased ironically to term it, of introducing Mr. Pitt's name into these Debates. The name of Mr. Pitt had been put forward by the Gentlemen on the other side of the House, and had been relied on as giving weight and authority to the Precedent of 1788. The Right Hon. Gentleman could not but know this, for he had so used the name of Mr.

Pitt himself, and had apologized for departing in any respect from a Precedent which was supported by so great an authority.

"I should indeed feel very much ashamed, had I been really guilty of diverting the attention of the House from any question before it, for the purpose of throwing reflections on the memory of Mr. Pitt, or of any other individual; but the Precedent of 1788 resting principally on the authority of that Minister, what I have been induced to say of him was, in truth, only an answer to the argument which had been resorted to on the other side. I had no alternative but to answer that argument in the manner I have done, or by my silent acquiescence to admit its validity. But is the course, which I have pursued, so extraordinary?—Even in Courts of Justice, when precedents are cited, it is not unusual to discuss the characters of the Judges on whose authority they rest.

"For enabling me to appreciate the worth of Mr. Pitt, the Right Hon. Gentleman has proposed a criterion, to which I am, by no means, disposed to refer. Few men know themselves; and I should indeed exhibit a lamentable instance of self-ignorance, if I had the folly and presumption to think of measuring other men's merits by the standard of my own. But my Hon. Friend, the Member for Yorkshire (who, on a former night, without feeling the necessity of previous prepara-

tion, in the simple language of the heart defended the memory of his Friend) has advised me to extend my reading, that I may be the better able to estimate Mr. Pitt's character. Sir, the history of Mr. Pitt's administration I have not forgotten. Of that, as well as of every other transaction of his public life, I have been, I hope, no inattentive observer. I speak, therefore, of what I have myself seen and know. The opinion which I have formed, may be erroneous, but it is founded on the evidence of facts. I have never disputed that Mr. Pitt possessed the most splendid talents; but I cannot recollect how those talents have been employed,—how the influence, which he so long enjoyed, has been exerted,—and what opportunities of improving the condition of his fellow-creatures he has lost, and join in that veneration which some men feel for his memory. If the Right Hon. Gentleman had in plain and simple language just pointed out the acts of Mr. Pitt's administration which I had overlooked;—if he had only told me to what class of His Majesty's subjects I was to turn to discover increased happiness and comfort, the effects of Mr. Pitt's talents, or to what part of the empire I might look to 'read *his* history in a nation's eyes,'—he would have much more effectually served the memory of his friend, than by all this long and laboured accumulation of eloquence."

CRIMINAL LAW.

February 21st, 1811.

Sir Samuel Romilly spoke to the following effect: "It is my intention, with the permission of the House, to move for leave to bring in certain Bills which appear to me calculated to improve the Criminal Law of the country; and rising under the impression, that, by persevering in the recommendation of measures to which, during the last Session, the Legislature refused its sanction, I may be supposed either not to have re-examined the subject with sufficient caution, or not to be sufficiently disposed to yield my own opinion to the collected wisdom of the nation; rising under this impression, I must request the momentary attention of the House to the peculiar circumstances attendant upon the rejection of the Bills which I last year had the honour to submit to its consideration; and I am much mistaken, if, after this indulgence, I shall be censured for presumption in requesting a more mature deliberation upon this subject.

"I last year proposed three Bills, to amend three different Statutes, by which death is denounced as the punishment for stealing, to the amount of five

shillings, privately in a shop;—for stealing to the value of forty shillings in a dwelling-house;—and for stealing to the amount of forty shillings on navigable rivers. It will be in your recollection that the Bill to repeal the Statute by which the punishment of death is attached to the crime of stealing to the amount of five shillings privately in a shop, although it obtained the approbation of this House, in which it passed without a division, was ultimately rejected by another branch of the Legislature. The Bill for abolishing the punishment of death for stealing to the amount of forty shillings in a dwelling-house was examined in the presence of only sixty-eight members, and was negatived by a majority of only two. The third Bill, for stealing to the amount of forty shillings on navigable rivers, was adjourned from day to day, until there was evidently not sufficient time for its investigation before the prorogation of Parliament. It was therefore reluctantly relinquished. Under these circumstances, and when it is remembered that the infliction of death is the subject of our deliberations, I am sure, that however Gentlemen may differ from me as to the expediency of the alterations themselves, I shall meet with your and with their approbation when I submit that this question is entitled to further examination. It is, I trust, unnecessary for me to say, that I know too well the respect due to this Assembly, to persist in urging a plan which,

after having been fully heard and deeply considered, has been recently and deliberately rejected. I certainly should not persevere, were I satisfied that the sense of the community was clearly against me: but I have no such persuasion. It was not from light motives; it was from no fanciful notions of benevolence, that I have ventured to suggest any alteration in the Criminal Law of England. It has originated in many years' reflection, and in the long-established belief that a mitigation of the severe penalties of our Law will be one of the most effectual modes to preserve and advance the humanity and justice for which this country is so eminently distinguished. Since the last Session of Parliament I have repeatedly reconsidered the subject: I am more and more firmly convinced of the strength of the foundation upon which I stand: and even if I had doubted my own conclusions, I cannot forget the ability by which I was supported within these walls: nor can I be insensible to the humane and enlightened philosophy, by which, in contemplative life, this advancement of kindness has been recommended. I cannot, therefore, hastily abandon a duty, which from my success in life, I owe to my profession; which as a member of this House, I owe to you and to my Country, and which, as a man blessed with more than common prosperity, I owe to the misguided and unfortunate.

"Actuated by these motives, it is not to be

imagined that I shall be easily discouraged by any of the various obstacles, so commonly and perhaps with propriety opposed to every attempt to alter an established law; upon such a resistance I calculated—but am not to be deterred.—I knew that my motives must occasionally be misunderstood by some, and might, possibly, be misrepresented by others. I was not blind to the road where prudence pointed to preferment; but I am not to be misled from comforts which no external honours can bestow. I have long thought it was the duty of every man, unmoved either by bad report or by good report, to use all the means which he possessed for the purpose of advancing the well-being of his fellow-creatures, and I know not any mode by which I can so effectually advance that well-being, as by endeavouring to improve the Criminal Laws of my Country. It has been insinuated, that, indebted as I am to the Law, commendation rather than censure ought to be expected from me; and it has been asserted, that, under the pretext of proposing apparently immaterial alterations, my real object is to sap and undermine the whole Criminal Law of England. Such insinuations and assertions have not, I am well aware, been made by any of my Hon. and Learned Friends by whom I am now surrounded, and who have witnessed my whole professional life; but they have been made, and I must of course suppose, have been really believed.

"It is some consolation to me to reflect, that the odium of these imputations is shared by me with some of the most distinguished ornaments of the Bar and of the Bench;—that the attempts which I have made, are sanctioned with the approbation of authority, by which labour more severe would become easy, and burdens far more weighty would become light. I must content myself with the authority of Lord Coke and of Lord Bacon. Lord Coke and Lord Bacon thought and said, that every man was a debtor to his profession, and that he who was better by the knowledge of the laws, should be vigilant that the laws were better by his industry *. It was not by words alone, but by their conduct, that these great men discharged that debt which they felt themselves to owe to their profession. Active in public life, in private they were laboriously studious: and, differing as they did upon many subjects, they united in a zealous attachment to the law of England, and in unwearied endeavours to preserve and improve it.

"But it is not upon the authority of any man, however dignified, that I rest my defence against such accusations. Does any Gentleman really imagine, that I have sufficient strength to overturn a fabric which has endured and been

* See Bacon's Preface to his Law Maxims; and Coke's Preface to the Sixth Report.

confirmed for so many centuries? And, if I am misled by such imagination, does he suppose, also, that I have the blindness not to see the ruin in which we all must be involved?—I, at present, have no intention to propose to the House any measures but those which I submitted last year, and which I now again submit to your consideration; with the exception indeed of one Bill, of minor importance, proceeding upon similar principles, and which I shall be prepared to state in a few days. But even if it were my intention to propose further alterations; if I had any such latent objects in view, ought perversion of mind to militate against the adoption of measures in themselves beneficial?—What answer would it be, if a Judge were to say to a suitor: "I will withhold the right for which you apply, and to which you certainly are entitled, because, if I grant it, to-morrow you will ask for what is wrong?' I have not been accustomed to hear such reasoning in Westminster Hall: and I cannot think it will be seriously urged by the Legislature of a nation, not fearful of its weakness, but conscious of its disposition to resist, and of its power to subdue, what is injurious to the community.

"I have to apologize for having thus trespassed upon your attention, in endeavouring to remove these erroneous notions. The good or bad effects of the Bills themselves are, certainly, far more serious subjects for your attention; yet even

with respect to them, I should not, after what passed last year, trouble you with any further observation, were I not, from an additional year's experience, confirmed in the opinion which I entertained of the beneficial effects likely to result from the alterations now proposed; for during this year we have seen the consequences which have resulted from the repeal of the 8th of Elizabeth. During the debate upon that Act it was contended, that one of the strongest reasons for a repeal of a law by which death was denounced as the punishment for stealing to the amount of twelve pence privately from the person, was its necessary tendency to prevent the conviction of offenders by its severity deterring prosecutors from appearing, witnesses from speaking the whole truth, juries from convicting, and judges from executing the law. It did not require much knowledge of human nature to predict that an increase of convictions would attend the mitigation of the law, and that offenders, instead of escaping with impunity, would be arrested in the commencement of their career. This has followed. Since the alteration of this law, there have been more convictions for stealing from the person than at any former period. Not only has the number of prosecutions increased, but in the same number of prosecutions, there have been more convictions. It seems, therefore, evident that we may expect more cer-

tainty of punishment from the adoption of the laws which it is my wish now to introduce. I therefore move for leave to bring in Bills for preventing stealing in the dwelling-house,—privately stealing in shops,—and stealing on navigable rivers."—Leave was given.

STEALING IN BLEACHING-GROUNDS.

February 27th, 1811.

Sir Samuel Romilly rose to present to the House two Petitions, the one from a large number of proprietors of bleaching-grounds in the north of Ireland; the other from several master calico-printers in the vicinity of London. The Petition from Ireland was signed by upwards of 150 petitioners (persons, as he understood, of the highest respectability), and conveyed the wishes of a very extensive class of proprietors in that part of the United Kingdom. The signatures to the Petition from the calico-printers in England were not so numerous, but he was informed that they were the signatures of a great majority of the different proprietors of that useful and extensive branch of trade in the neighbourhood of London.

The object of these different Petitions was the same. They stated that the property of the petitioners, being from its nature much exposed, was subject to a variety of depredations, and prayed that the punishment of death, now attached to a conviction for those offences, might be repealed. The reasons upon which this prayer was founded, appeared to him (Sir S. Romilly), and would, he trusted, appear to the House, to be deserving of the most serious consideration. The petitioners, it would be remembered, were not stating the opinions of speculative and theoretical reasoners, but the sincere belief and conviction of experienced men representing the injuries which their property had sustained in consequence of the inefficacy of the laws made for their protection.

The Petitions stated, that, from the severe penalty denounced by the law, the injured were unwilling to prosecute, and juries disinclined to convict:—that, from this relaxation of the law, offenders escaped;—and from the uncertainty of punishment the commission of crimes was encouraged, and the property of the petitioners rendered insecure.

If the effect produced by these Petitions on the House, should be similar to the impression which they had made upon his (Sir S. Romilly's) mind, he trusted that he should obtain its concurrence to the two Bills which it was his wish to submit to the consideration of the Legislature.

Sir Samuel Romilly then gave notice, that on the Monday following, he should move for the repeal of the Acts of the eighteenth of George II. and of the third of George III. (which attached the punishment of death, the one to the crime of stealing to the amount of five shillings from Bleaching-grounds in England; and the other, to stealing from Bleaching-grounds in Ireland to the amount of ten shillings), might be repealed. He concluded by moving that the Petitions should be read. The Petitions were read, and ordered to lie upon the Table*.

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* The Petitions stated, that the petitioners' property was much exposed to depredation.

That the laws which punished the offence with death had been found ineffectual to restrain such depredations; for that, owing to the lenity of prosecutors, the unwillingness of Juries to convict, and the general leaning to the side of mercy, when the punishment was, by the common opinion of mankind, considered as disproportioned to the offence, very few convictions took place, and consequently offenders mostly escaped, and were encouraged in the commission of crimes.

That the petitioners were strongly impressed with the sentiment, that by certainty of punishment being substituted for severity of punishment, the number of crimes would be diminished, and the petitioners' property better secured; and they therefore humbly prayed that Parliament would change the punishment of death in cases of robbing Bleaching or Printing Grounds, into transportation, or such period of confinement in Penitentiary Houses as to its wisdom might appear eligible.

STEALING IN BLEACHING-GROUNDS.

March 4th, 1811.

Sir Samuel Romilly rose to move for leave to bring in a Bill to alter and amend the Act of the third of George III. which takes away the benefit of clergy from persons convicted of stealing from Bleaching-grounds in Ireland. "The Bills" (he said) "relating to penal Law, which I have hitherto submitted to the consideration of the Legislature, have been confined to England, not because I entertained any doubt that the measures, if salutary in this part of the United Kingdom, would be equally beneficial to Ireland, but because I thought that any proposal to meliorate the law of that Country, would be made with more propriety by some Gentleman, better acquainted, than I have the good fortune to be, with that part of His Majesty's dominions. Having, however, had the honour to present to this House, a Petition from a considerable body of respectable Irish Manufacturers, imploring our protection from the depredations, to which, from the severity of the existing laws, their property is now exposed, I think it right to move for leave to bring in a Bill, to repeal so much of an Act passed in the third year of His

present Majesty, as takes away the benefit of clergy from offenders convicted of stealing in Bleaching-grounds in Ireland.

"After the repeated observations with which I have at different times been compelled to trouble the House upon this subject, I shall content myself, on this occasion, with expressing a hope, that the present application will not experience any opposition. It is founded upon a complaint made by the proprietors of that valuable manufacture for which this Country is so much indebted to Ireland. They state that, from their own disinclination, and from the aversion felt by witnesses, and by the Courts, that death should be inflicted for these offences, guilt now escapes with impunity, and the very laws which were framed with an intention to protect their property, render it insecure. I understand that this statement, so highly deserving of consideration, is confirmed by a reference to the proceedings in their Courts of Criminal Law, from which it appears, that in a given number of prosecutions, the acquittals are more numerous than in England."

Sir John Newport stated his entire concurrence in the opinions of his Hon. Friend; and said, that he should be happy to avail himself of every opportuuity to contribute to the advancement of such wise measures. In expressing the obligations which he personally felt for these humane and unwearied exertions, he was satisfied that he de-

clared the sentiments of that respectable class of the Community, upon whose Petition the Bill was founded.

Leave was given to bring in the Bill.

APPEALS IN THE HOUSE OF LORDS, AND ARREARS OF BUSINESS IN CHANCERY.

March 7th, 1811.

Mr. M. A. Taylor moved for a Committee "to inspect the Journals of the House of Lords, to ascertain the number of Appeals before that House." His next Motion, the Hon. Gentleman observed, would be to ascertain the number of motions and questions decided and heard in the Court of Chancery during the last five years, and the arrears of business in that Court. The inquiry was opposed by the Chancellor of the Exchequer, and Mr. Simeon, on the ground, that the matter had been taken up in the House of Lords, and that the tendency of the measure proposed by Mr. Taylor, would be to attach blame to the Lord Chancellor. Mr. Adam wished the Debate to be adjourned for three weeks, that, in the event of the decision of the other Committee not being,

satisfactory, the business might be resumed in the House of Commons.

Sir Samuel Romilly declared, that if the question of Adjournment should not be carried, he should vote for the Motion of his Hon. Friend (Mr. Taylor). The Motion conveyed, neither directly nor indirectly, any mark of censure upon the Lord Chancellor, as a Learned Gentleman had erroneously supposed. "Nothing" (continued Sir S. Romilly) "would give me greater concern, than to be thought to consent to any Motion, which could in any way be construed into a reflection upon that Noble and Learned Lord. No man has experienced from him more uniform acts of kindness than myself. Indeed his general attention to the Bar, his conciliatory demeanor, and, above all, his strict love of justice, have endeared him to all the Gentlemen who practise in his Court. A man more eminently qualified, in point of talents and learning, for all the duties of his profession, I do not know; and in point of anxiety to do justice to the Suitors of the Court, I firmly believe he has never had his equal. If he has any defect, it is an over-anxiety in that respect. This being my opinion, it cannot be imputed to me, that I wish, in any thing I may say, to reflect on the character or conduct of the Noble and Learned Lord; but when it is notorious that great and crying grievances really exist, will it

not be, as my Hon. Friend has justly said, 'a denial of justice,' not to inquire into them? The fact is, that, from the great pressure of business within the last two years, causes have stood for that time in the Lord Chancellor's paper for hearing, without having yet been heard. Is not this period of delay a sufficient ground for inquiry? In the House of Lords the delay has been of a much greater length. In one cause, which was that of a copy-right, and which had come before the House from the Court of Session, the decision was not known, until the interest of the Appellant had ceased, the period of his right (fourteen years) having previously expired."

With respect to the question then before the House, Sir Samuel Romilly thought that the first thing to be done, was to ascertain the cause of the evil complained of; and then, if possible, to provide a remedy. What this remedy might be, and how it was to be effected, would be a subject for after-discussion. He much doubted whether the number of causes since the time of Lord Hardwicke, was greater or not.. The increase of Bankruptcies was certainly a serious evil. A Commission in that respect might assist the Chancellor, and, by affording a temporary remedy, get rid of the press of business of that nature. The Right Hon. Gentleman had stated, that inquiry was going on, but he had not stated whether any plan was matured, or whether it was in the contemplation of any one,

to bring forward a plan. At the same time he admitted, that it was a question which involved great difficulties. Nothing, however, had been done for upwards of ten months, notwithstanding so much had been promised.

Sir Samuel Romilly concluded by saying, that it was the duty of the House of Commons to investigate all public grievances without waiting for the result of any proceedings in another place. He should, therefore, support the Inquiry.

The House then divided on Mr. Adam's Amendment, when there appeared,

For the Adjournment - - - - -	47.
Against it - - - - - - - - -	87
Majority against the Amendment -	40

The previous Question was then carried without a division.

SPILSBY POOR BILL.

March 19th, 1811.

Sir James Graham having moved the second reading of the Bill for the relief and regulation of the Poor of the Parish of Spilsby, and other parishes and places in the parts of Lindsey, in the County of Lincoln; Sir Samuel Romilly said,

"However singular the clauses to be found in Bills of this description frequently are, there are clauses in the present Bill so unusual, as to call in a particular manner for the attention of the House. This Bill enabled the Governor and Master of the Spilsby Poor-house to punish, at pleasure, the Poor under their charge, by solitary confinement, and other most severe punishments." [Sir Samuel Romilly then proceeded to read a clause of the Bill, by which, if the Poor should be guilty of profane cursing and swearing, disorderly behaviour, or riot, and drunkenness, or neglecting or refusing to perform their work, they were to be punished with solitary confinement, abatement of diet, or the stocks, at the discretion of the Governors.]

"But this is not the only singular clause. To damage the house or fences is punishable, as a felony, or petty larceny. And what is unexampled in this Country, the directors are to have a power of letting out the poor to any person, who, for his ninepence a day, may be disposed to extract profit from the feeble limbs and worn-out bodies of these unfortunate persons, somewhat in the same manner as job-negroes are let out in the Colonies. What is yet more extraordinary, they are empowered to contract with all the other parishes of the county of Lincoln, the second most extensive county in England, for their poor, who are to be compelled to go into

this House of Industry, and to be let out and punished in the same manner; so that the Spilsby House of Industry is to be a great mart for the pauper slaves of the county of Lincoln.

"Now, having seen the severity of this Act, let the House look at its lenity; for, if severe to the paupers, to others it is kindness itself. Should the governor, clerk, or any other officer, purloin the work tools, or any of the chattels of the house, a crime which is felony by law, the punishment is to be only a fine of three times the amount, or a short confinement. And what is the remedy provided by the Bill against any abuse of power? Should any person be wrongfully kept in solitary confinement for a month, or a longer period (and what a severe punishment solitary confinement for such a period must be to a person of an uncultivated mind, it is not necessary to remind the House), if the poor person so wronged can be fortunate enough to find an attorney in the place willing to undertake his cause, it is in his power to bring an action against such governor or master; but the period within which this action must be brought, is limited to one month after the offence."

Sir James Graham declared, that he did not know such clauses were in the Bill; or he certainly would not have moved the Second Reading. He did not believe that the honourable Members for Boston and for Derby, who had taken charge of

the Bill, and in whose absence he had moved the reading of it, were acquainted with what had been stated by the Hon. and Learned Gentleman. He should, therefore, in order to give the parties an opportunity of considering this extraordinary Bill, move, that it be read a second time that day se'nnight;—which was agreed to.

On the 26th of March Mr. Chaplin moved the Second Reading of the Spilsby Poor Bill, for the purpose of postponing it for a month. He was aware, he said, that there were many objectionable clauses in it; but perhaps with alterations it might be rendered worthy the attention of the House. Sir S. Romilly replied, that he was anxious to give every opportunity for improvement, where improvement was possible; but the whole frame and object of the Bill was bad; there was not a single clause but what was liable to objection. He then again adverted to some of the most extraordinary provisions of this Bill, which was intended to operate upon twenty united parishes. The directors were empowered to compel all the poor throughout the whole extent of these parishes, whether asking for relief or not, to go into this workhouse. They were to have all the authority of magistrates with respect to such as they should consider vagrants. They were to be allowed to enter houses at their discretion to search for vagrants They might commit to solitary im-

prisonment, without limit, the poor whom they collected, and administer moderate correction for misbehaviour; in other words, they were to have the power of flogging the poor under their control, at their own discretion. They might, besides, by this Bill, seize all the poor children in the parish, whether asking for relief or not, and bind them apprentices at their discretion. He understood that many of the most respectable inhabitants of Spilsby had never heard of such a Bill, and that they strongly disapproved of its provisions. Sir Samuel Romilly next adverted to some very objectionable provisions in Acts relating to the poor, that had passed in former Sessions, the St. Paul's Shadwell, the St. George's Southwark Acts, &c. and recommended a more strict attention to those Bills in future. He thought that a remedy to these workhouse regulations was urgently required, and concluded by proposing, that the Bill be read a second time that day six months.

After a few words from Mr. Ellison, Mr. Curwen, Mr. G. Vansittart, &c. the Bill was rejected without a division.

INFORMATIONS EX OFFICIO FOR LIBEL.

March 28th, 1811.

Lord Folkstone moved "for an account of all Prosecutions for Libel, by Information *ex officio*, since the 1st of January 1801, with all the proceedings had thereupon, specifying the dates of the publication of the said alleged Libels, and of all the subsequent proceedings had upon each respectively." The Motion was supported by Sir Francis Burdett and Mr. P. Moore, and opposed by the Attorney General, Mr. Stephen, and Mr. William Elliot. Sir Samuel Romilly said, that it was not his intention to enter upon the general question which had been that night the subject of discussion, but that he would shortly state his reasons for the vote which he should give in favour of the Motion. The object of it was merely for an account of the number of ex officio Informations that had been filed within a certain number of years.—"Now, really" (said Sir Samuel Romilly), "when it is considered that these are professedly prosecutions instituted by the Government, for the public service, and at the public expense, there must be very strong reasons indeed, for not acceding to the production of the account

moved for. Every thing that has been said by my Hon. and Learned Friend, the Attorney General, affords the strongest reasons for granting the desired information. Public prosecutions ought never to be matters of secrecy, and particularly prosecutions relating to the liberty of the press, which is the great safeguard of all our privileges, civil, religious, and political.

"The strongest grounds, then, ought to be laid for rejecting the Motion, if it is to be rejected. But it is said, that a charge has been made, and if the House grants the papers sought for, it will seem to sanction that charge. Now, to me it appears, that there have been rather two statements of facts made, and that what has been asserted on one side of the House has been denied on the other. How is the question between the parties to be decided? How is the House to form its opinion without some authentic information as to the real circumstances of the case? My Learned Friend (Mr. Stephen) who spoke last but one, has said, that the libels which had been prosecuted by the Attorney General had no connexion with the present Administration, or with one Administration more than another, and therefore that the advisers of such prosecutions are not actuated by party motives. This may be all very true; but how is the House to know it, if authentic information is denied? Who could say how long these prosecutions had been suspended over the heads of the defendants? From the

speech of my Learned Friend the Attorney General, the House may naturally be led to conclude, that he has acted a most meritorious part. Why, then, does he object to give that decisive evidence of the propriety of his conduct, which will satisfy the House and the Country?

"Ministers are often in the habit of talking loudly of their responsibility; and this never fails to call forth the warmest cheers from their surrounding friends. Yet, put their boasted magnamity to the test, and we find them, perhaps on the very next day, refusing all information, and resorting to the most frivolous and unworthy pretexts to prevent any investigation of their conduct, without which they must be well aware, that there can be no real responsibility! My Learned Friend complains of unfounded suspicions. If such are abroad, how can they be so easily, so effectually removed, as by acceding to the present Motion? How, on the contrary, are they so likely to be confirmed as by a pertinacious refusal, on the part of those affected, of all information requisite for developing the truth of the case? I cannot conceive a more important benefit to the character of a Government, whose actions have been so much misrepresented as those of the present Government are described to have been, than to afford it an opportunity of explaining and justifying its conduct by the production of such testimony as that which is now called for. For my own part,

one of the reasons which makes me not the less desirous of the present inquiry, is, that it will include the period when I had the honour to be Solicitor General, and when, I believe, no prosecution was undertaken without my opinion and assent.

"It has been said by the Gentlemen opposite, that the press is at present more licentious than formerly; but this is the common language of all Ministers. Publications, affecting their own past, and perhaps future conduct, and thus coming home, in so peculiar a degree, to their own bosoms, naturally appear to them in a darker and less favourable light than any thing which has long gone by, and which regarded alone the policy and character of others. If, however, the press has, of late, been more licentious than before, it is only a proof of its wonderful buoyancy and vigour; for it must have grown under greater restraints, than had ever before been experienced by it, from the time of the Revolution."

After some farther observations, Sir Samuel Romilly concluded, by expressing his entire concurrence in the Motion before the House.

A division took place, when the numbers were,

For the Motion - - - - -	36
Against it - - - - - - -	119
Majority against the Motion -	83

STEALING IN DWELLING-HOUSES.

March 29th, 1811.

Sir Samuel Romilly moved the second reading of the Bill for repealing so much of the Statute of the twelfth of Anne, as makes the stealing to the amount of *forty* shillings in a Dwelling-house, Felony without benefit of Clergy.

The Motion was supported by Sir John Anstruther, Mr. Macdonald, Lord G. Grenville, Mr. Morris, and Mr. Abercrombie; and opposed by Mr. Frankland, Mr. Herbert (of Kerry), and the Chancellor of the Exchequer. Sir Samuel Romilly rose to reply to the various objections which had been urged against the measure, and spoke in substance as follows.

"Sir, frequently as I have found it to be my duty to submit to the consideration of this House, the reasons by which I have been induced to call the attention of Parliament to the state of the Criminal Law, it is with great reluctance that I again trespass upon the indulgence which I have so often experienced.

"It is certainly my wish that all the observations made by my Hon. and Learned Friend (Mr. Frankland) who has spoken so much at

length in opposition to the Bill now under deliberation should be fully examined, and their merits fully ascertained. There are many of them, however, which I must leave unanswered; for, after all the attention which I have been able to command, I am under the necessity of confessing, that such answer is as much beyond my ability, as the observations themselves were beyond my comprehension. I must, therefore, confine myself to the few remarks which I was so fortunate as to understand.

"My Honourable Friend, in confirmation of his favourite opinion, that all persons who differ from him upon this question of criminal legislation, must be misled by the illusions of a heated imagination, has contended, and fearful that it might escape the notice of the House, has again and again repeated, that from the nature of my professional occupations, I am by no means a competent judge of the expediency or inexpediency of the Law which I have more than once called upon Parliament to repeal. It is not, we are informed, from the Court of Chancery, but from the Court of Quarter Sessions, that valuable information upon these important subjects is to be obtained. I am fully sensible of our obligations to the worthy Magistrates, who, in their respective Counties, assist, with so much inconvenience to themselves, in the administration of justice: but I am much mistaken, if they will be as ready to receive, as my Hon. Friend is to

bestow, such praise for their services. Whatever may be the opinion entertained of my labours, I can scarcely think that my Hon. Friend is serious in his opinion, that all practical legislative wisdom has quitted this great City, and that we, in the Court of Chancery, are a sort of easy, speculative, *dilettanti* Lawyers, wholly incompetent to form any sound opinion upon Criminal Legislation. That I may be mistaken, I am very ready to admit; but if I am really as ignorant as my Hon. Friend supposes, my ignorance must be most unpardonable. The subject of Criminal Law has always been most interesting to me. It has, more or less, through life, been my particular study. For fifteen years I constantly attended our Courts of Criminal Law; and, although my researches may not have been very successful, I am in possession of notes, by which my Hon. Friend may be convinced I was not wanting in diligence; and that my endeavours to obtain information were not confined to the collection of a few scattered remarks in our superior Courts upon the Circuit, but extended to the Courts of Quarter Sessions, where I had the honour for many years to practise.

"I trust, therefore, that I shall not be supposed so likely to be misled by these delusive and alarming speculations; which, when I consider the abstruse and incomprehensible theories into which my Hon. Friend has this night wandered, I cannot but express my astonishment that he

should consider so culpable. The charge of theory has, however, not been confined to me; my errors have been traced to an author with whom I am, indeed, proud to be associated: and the same illusions have by my Hon. Friend been discovered in a work, which, abounding, as it does, with the knowledge of human action and the principles of legislation, I did not till this moment suspect to be so intimately connected with the Bills now submitted to the consideration of Parliament. To what part of the work my Hon. Friend alludes, or whether his statement has originated in the mistaken review of a justly celebrated periodical publication, I am at a loss to discover: but I must avail myself of this opportunity to say, that if by the debate of this night, any Gentleman is induced to read Mr. Bentham's work, my Hon. Friend may enjoy the consciousness that he has not laboured in vain: it is not to be expected, that such a publication can at once become popular. We may be too near the object to see it distinctly;—but by the exertion of Mr. Dumont, second only to Mr. Bentham, it has been translated and extensively circulated on the continent: and in future times, when we and our differences are alike forgotten in the grave, this acquisition to English philosophy will be claimed, and its merits duly appreciated, by this Country.

"But allowing that this cry of dangerous innovation is entitled to the utmost consideration;

supposing this charge of hasty reform to be, not the mere commonplace objection to all improvement, but the result of great reflection, let us examine what weight it really possesses. To hear these declarations seriously made;—to witness so much alarm at a proposal to amend the Criminal Law, it must naturally be imagined that the existing code of laws was framed by the profound wisdom of our greatest lawyers and statesmen, maturely deliberating upon public happiness. This, however, is nothing but imagination; the fact is directly the reverse: so much the reverse, that very few, if any, of these laws inflicting the punishment of death, before the reign of His present Majesty, received any of that discussion to which such proposals are now submitted, before they are adopted as laws. They were, as Lord Bacon observes, 'introduced on the spur of the occasion,' and passed through Parliament generally without notice, and always without debate.' A Gentleman relying upon the efficacy of severity to prevent crime, moved that, for breaking the head of a fish-pond or some such offence, 'the benefit of clergy might be taken away;' and it was taken away,—and we are now gravely informed, that, by venturing to inquire into the principles of such legislation, we shall be removing the ancient landmarks,—endangering the happiness of the Country,—and undermining the liberties of England! I hope my Hon. and

Learned Friend will, when he reflects upon such imaginations, think that this serious charge of departing from facts and following vain theories, ought not to be confined to the friends of the Bills now before the House.

"It is not upon any theory, but upon facts, which have been repeatedly urged, that these amendments are proposed. It is not any mistaken theory, but a well-grounded fact, that the chances of escape, as the law now stands, are multiplied to such a degree, as, by rendering impunity more probable than punishment, to operate as a snare for the commission of crime. This relaxation of the law begins with the party injured: it has its influence upon the witnesses, the Jury, and the Bench; and it extends to the King's advisers, who, in the lenity with which the law is now executed, concur in the general feeling of the nation. My Hon. and Learned Friend near to me (Mr. Abercrombie) has stated the disproportion between the commitments and prosecutions for stealing in a dwelling-house; but, on a comparison between the commitments and prosecutions for privately stealing in a shop, the disproportion will be discovered to be much greater. By the returns made from the Secretary of State's Office, and now lying upon the table of this House, it appears, that, during the last five years, there have been 598 commitments for this offence: of these 598 commitments, there have been but 120 trials:—of

these 120 trials only 20 convictions: and of these convictions not a single execution. It is unnecessary to repeat the different commitments, prosecutions, and convictions for larceny from the dwelling; but it will be found, that, during the same period, there have been but two executions for this offence. It will not, I trust, be supposed that this statement is made with the slightest intention to disapprove of such lenity. It is adduced solely as a proof that there is in the community a disinclination to visit these crimes by death, and to satisfy the House that this declamation upon theory and speculation (not very interesting from its novelty), is without foundation; and that the proposed improvements of the law have not been submitted to Parliament, until facts had been collected and examined, that the House might be enabled to judge whether the alterations would be beneficial or injurious to the community.

"If I rightly understand the different reasoning which I have heard this night, it has been contended not only, that, there is not any disinclination in the country to punish these offences by death, but that, even allowing such disinclination to exist, and that it may, to a certain extent, operate upon offenders, still that the law ought not to be altered, because, taking all things into consideration, it has a more powerful effect in the prevention of crime, from the terror which it generates in the minds of the culprits. I think I am correct in my view of these arguments.

"That there is a disinclination in the community to punish these offences with death is, I conceive, satisfactorily proved by the statements now upon your table,—by the observations that have been made by my Hon. Friend near me (Mr. Abercrombie),—and by a very obvious truth, that a country, distinguished for its love of justice and humanity, must be averse from the injustice of indiscriminate severity.—Besides the instance which has been mentioned by my Hon. Friend (Mr. Abercrombie) of the Jury, who, rather than be instrumental in inflicting the punishment of death for this species of larceny, found a ten pound note to be worth only thirty-nine shillings *, I must beg to notice another very recent case of a similar verdict before a most able Judge. It was the case of an apprentice to a Lapidary who lived in St. Giles's: I cannot recollect the name of the prisoner, but he was tried before Mr. Justice Lawrence, and his trial is in the Sessions Paper for the year 1807. The indictment was for stealing a pocket-book, estimated at sixpence, and eight Bank notes value ten pounds each. The lad was undoubtedly guilty; but until this first offence, he had been a faithful servant, and partly by the master's inattention to his own property, the boy had yielded to the temptation.

* Case of Bridget Mac Allister, 21st of November 1808—Sessions Papers, 1808.

The Jury found him guilty of stealing to the value of thirty-nine shillings. A serious, a most distressing situation for a Jury! a cruel case! to be compelled to call on God to witness the observance of their oaths, and then to open the Statute-book containing this Act! Feeling that this lad might turn from his wickedness, they could not be instrumental in consigning him to death. In this conflict they reconciled themselves to an evasion of their oaths, and scarcely thought that they had offended the laws of God to whom they had so solemnly appealed.

"I ask my Hon. and Learned Friend whether these are facts or delusive theories. I ask whether a Jury ought to be placed in this distressing situation? Whether they ought to be exposed to this alternative of being accessory to what they conceive to be little less than judicial murder, or to commit what they must feel to be judicial perjury!

"But it has been contended, that, even supposing all this declamation respecting theory to be erroneous, even allowing that, in fact, there is this aversion to prosecute such offences to death; still the law ought not to be altered, because it deters by terror from the commission of crimes. This observation has so often been answered, that I shall content myself with saying, that this mistaken view of the motives and nature of human actions originates in the sup-

position that men are to be scared from guilt by the *threat* of severe punishment. By this happy discovery all crimes may soon be exterminated. Terrible denunciations, without actual infliction of pain, will attain every object which the Legislator may deem expedient for the welfare of society. But this opinion is radically erroneous. When vice is tempted by the certainty of gain, and the certainty of immediate gain, it will have recourse to every expedient to indulge its depraved propensities: it will delude itself with the chance of concealment, with the hope of flight, with all the various deceptions which misguided passion is ever prone to discover when bent upon gratification. Frame your laws in such a spirit that they cannot be executed; let the parties injured acquiesce in their losses; let witnesses suppress the truth, juries evade their oaths, and your judges arrest the law in its course; and depend upon it, it will not be the severity of your *threats* that will be regarded. Amidst so many chances and hopes of escape they will be almost overlooked, and vice will be attracted to perpetrate the crimes from which, by a more certain punishment, it would instantly be repelled.

"As a reason to induce the House not to suffer the present Bills to pass into laws, it has been stated, that since the year 1808, when the punishment of death for privately stealing to the amount of twelve pence from the person, was

altered to transportation, this crime has much increased, because there has been an increase in the prosecutions and convictions.—It is in reality more difficult than it may at first appear to ascertain from this source whether there has or has not been any augmentation in prosecutions for this offence: for the statutable crime, previous to the alteration of the law, was '*privately* stealing from the person.' Since the alteration, the crime is merely '*stealing from the person:*' so that the indictments are for such different offences, that any attempt to determine, from the number of prosecutions, whether there has been any variation in the crime of privately stealing from the person, must be attended with considerable difficulty. But I am very ready to admit, that the number of prosecutions for privately stealing from the person has increased, and I am sure it will be remembered that this increase was predicted by all the supporters of the Bill then submitted, and of the Bills now submitted, to Parliament. The impunity of guilt was urged again and again as one of the great evils attendant upon severe laws: and if, in fact, the *immediate* effect of this alteration in the punishment for privately stealing from the person, has been an increase of prosecutions, it is so far from being a reason against the adoption of these Bills, that it affords the strongest ground for expecting the most beneficial effects from their enactment. The *immediate* increase of

prosecutions was to be expected: and when the chance of escape is discovered to be hopeless, we may reasonably calculate upon a diminution of the crime. No person imagined, that by denouncing a less severe punishment against the offence you would immediately strike a greater terror into offenders, but that the punishment being less severe, prosecutions would be much more frequent, and consequently a much greater number of offenders would be brought to punishment; and that the observation of this fact, and the knowledge that the chance of escape was much diminished, would operate as a terror to prevent the offence. The good effects of such a change of the law would not be very speedily felt, nor did those who recommended it ever hold out any expectations that it would.

"With respect to the observation of my Right Hon. Friend the Chancellor of the Exchequer, that Larceny from the Dwelling ought to be punishable with death, because it is a crime which may be accompanied by robbery and murder; it cannot be necessary for me to remind the House that robbery and murder are now capital offences; and I am at a loss to comprehend how, by inflicting the same punishment for crimes of different malignity, criminals are to be deterred from committing the more atrocious offences.

"The only remaining argument that has been urged, is an argument which, in examining the

different reasons in favour of, and in opposition to any change, is always entitled to due consideration:—I mean the argument of authority. My Hon. and Learned Friend has asserted, that all the Judges of England are averse from the alteration. By what right this is assumed to be a fact, I have not been so fortunate as to learn. I have no reason to suppose it to be so. I rather think, that upon inquiry the assertion will appear to be erroneous. I know, indeed, that a Judge of high rank entertains, and has, in another place expressed, sentiments different from what are, I trust, the sentiments of this House: and we have been informed this night, that the Recorder and Common Serjeant of the city of London object to any change in the Law.—I am deeply sensible of the respect due to the sentiments of these learned Magistrates: a respect that appears to me to be much augmented by the mode in which they have communicated to the House the impressions that have been made upon their minds. If they had confined themselves to a mere declaration of their opinions; if they had remained in this obscurity; we, seeing darkly, must have been content with confidence where conviction could not have been procured. But the Recorder and Common Serjeant have descended from the heights of authority, and submitted to our consideration the reasons upon which their opinions are formed. These reasons, therefore, we may venture to examine.

"We are informed that these crimes have, for some years past, greatly increased; that they are now increasing, and therefore that there ought not to be any alteration in the punishments.—We are informed that stealing to the amount of forty shillings in dwelling-houses, and to the amount of five shillings privately in a shop, are the most prevalent crimes: but such larcenies in dwelling-houses, and principally by the agency of menial servants, have now for some time exceeded, and do far exceed all other offences: and therefore the punishment denounced by the Legislature ought not to be changed. How, from these facts, such an inference can have been deduced by these intelligent and experienced Magistrates, is to me most extraordinary. The administration of justice is not attended with any mystery. The same reasoning which is applicable to any professional evil is applicable to the profession of law. If the plague or any of those sad diseases, not uncommon some centuries ago, were now desolating this city, and the College of Physicians, upon a reference to them by this House, as to the best mode of checking the contagion, were to report that there ought not to be any alteration in the medicines which they had for some time prescribed, because the number of deaths had greatly increased, and was now daily increasing, can any doubt be entertained that such advice would not be sanctioned by the approbation of this House?

Can there then be a stronger reason for a change in your system, than the statement by these experienced magistrates that your present punishments are inefficacious; that the crimes have for years increased, and are now daily increasing? This very inference has been deduced by these very magistrates in the very same statements with which we have been favoured by my honourable and learned Friend. Two years ago the Legislature thought proper to abolish the punishment of death for privately stealing to the amount of twelve pence from the person. Do not these worthy magistrates inform you, that since the alteration, the crime has increased; and have they not, therefore, inferred, that the alteration was injurious? There cannot be any necessity for me to repeat the observations which I stated to the House upon this part of the argument. I now mention the fact solely to prove that there is scarcely any sagacity which may not occasionally err, and that the soundest judgments are easily to be warped by any system to which attachment is formed from education, from habit, and from the frequent exercise of benevolence.

"If this crime has so increased, and is thus increasing, the question is, not whether there ought to be any change in the punishment, but of what nature the change ought to be. If our attempts to extirpate crime by severity have been so long tried, and with such little success, that rapine and

violence are hourly increasing; if the wheel and the rack are expedients to which we are not disposed to resort; let us endeavour to invigorate the laws by relaxation; let us, by preventing information from being hated, and conviction from being dreaded, detect vice in its infancy, and impose a cheerful obligation upon every person to assist in the exercise of public justice.

"But if I am mistaken in the correct conclusion to be established upon this statement, I trust that the House will not be misled by the representation which has been made, that the Bills are without any authority to support them. I have but little to fear, if the question is to be decided by the weight of authorities. Mr. Justice Blackstone—not at a period before his reputation was established, and when he might have been accused of theory and speculation,—when he too might have been considered a dilettanti lawyer, but in the last edition of his work, deplored the severity of our penal law, and lamented that a committee of revision was not appointed in every century*. Lord Bacon, in his proposal for a reform of the laws of England, says, "that there are a number of ensnaring penal laws which lie upon the subject; and if in bad times they should be awakened and put in execution, would grind him to powder. And that is ever a rule, *that any over*

* Com. vol. iv. ch. 1.

great penalty, besides the acerbity of it, deadens the execution of the law." Lord Coke* attached even to bigotry to the laws to which he so laboriously devoted his life, laments, that whilst the punishment of crime is so carefully attended to, the prevention of it by education of the poor, and by the execution of good laws not relaxed by the frequency of pardon, is overlooked or forgotten. He indulged a hope that this preventive justice would at some future time be deemed worthy the consideration of an English Parliament, and he called down blessings on those who would undertake this good work! Great as is the authority of Mr. Re-

* Lord Coke says, that "we have found by woful experience that it is not frequent punishment that doth prevent like offences, *Melior est enim justitia verè præveniens, quam severè puniens,* agreeing with the rule of the Physician for the safety of the body, *præstat cautela, quam medela;* and it is a certain rule that, *videbis ea sæpe committi, quæ sæpe vindicantur,* those offences are often committed, that are often punished, for the frequency of the punishment makes it so familiar as it is not feared. What a lamentable case it is to see so many Christian men and women strangled on that cursed tree of the gallows, insomuch as if in a large field a man might see together all the Christians, that, but in one year, throughout England come to that untimely and ignominious death, if there were any spark of grace or charity in him, it would make his heart bleed for pity and compassion, &c.

"The consideration of preventing justice were worthy of the wisdom of a Parliament. . . . Blessed shall he be that layeth the first stone of this building; more blessed that proceeds in it, most of all that finisheth it, to the glory of God, and the honour of our King and Nation." *Epilogue to the Third Institute.*

corder and Mr. Common Serjeant, I hope it will be remembered, that they are opposed by such authorities as Dr. Johnson, Sir Thomas More, Sir William Blackstone, Lord Coke, and Lord Bacon †."

The House then divided,

For the Second Reading - - - - -	79
Against it - - - - - - - - - -	53
Majority in favour of the Bill - -	26

PRINTERS' BILL.

April 5th, 1811.

Mr. H. Martin moved for the committal of a Bill to explain and amend an Act passed in the 39th year of His Majesty's reign, intituled, "An Act for the more effectual Suppression of Societies established for seditious and treasonable purposes, and for better preventing treasonable and seditious Practices, so far as respects certain Penalties on Printers and Publishers."

The Attorney General opposed the clause for confining the magistrates to the levying of one

† See the opinions of these, as well as of many other eminent men, on this most important and interesting subject, collected together by the truly enlightened and benevolent industry of Mr. Basil Montagu, in his work, "On the Punishment of Death."

penalty only for every publication, however numerous the copies. The Chancellor of the Exchequer thought it better to negative the clause, and to leave a discretion with the magistrates to raise the number of the penalties according to the circumstances of the case. Sir Samuel Romilly strongly objected to the proposal of the Chancellor of the Exchequer.

"To say nothing of cases of inadvertency" (he observed), "let us suppose one of the worst description, where the criminal intention is unquestionable: is it even in such a case to be the law of this country, that a magistrate may in a summary manner, at his own discretion, impose penalties on a subject to the amount of £20,000? This is a sum which no Court would think of imposing even for a libel after conviction by a Jury. A positive law made to prevent the publication of libel, is to leave it in the power of a single magistrate to exact this enormous penalty! My Hon. and Learned Friend has said, that printers are reading men, and, therefore, inexcusable if they violate the law. But this Act has been violated, even by those particularly conversant with the law. Masters in Chancery have inadvertently issued printed warrants for attendance without a printer's name, and have been indemnified by Act of Parliament. Persons of the purest intentions may be liable to these penalties. But the law punishes indiscriminately the criminal and the inadvertent.

Nay, it will be often found to bear with more peculiar rigour upon the honest and unwary. They attempt no concealment, while it may be difficult, perhaps, in many cases, to get hold of the criminal, and to levy the penalty from him. In this respect, as well as in many others, the proposition is highly objectionable. Why should the most honourable and useful business of printing be subjected to such severe restraints? There were none such till of late. From the period of the Revolution and the establishment of King William on the throne down to the present reign (times which have been generally admitted to be the best of the Constitution), the press was free. Why should it not be so again? Extraordinary restraints may sometimes be justified by extraordinary emergencies. Unfortunately, however, though the cause be temporary, the effects are too frequently permanent. The 39th of George the Third was enacted as a remedy for an evil which has long since passed away; and if my Learned Friend, instead of attempting to amend, had even proposed to repeal it altogether, he should have met with my hearty and entire concurrence."

An Amendment was afterwards agreed to, limiting the extent of the penalties in which the magistrate should be empowered to convict, to £500, and allowing him to mitigate it to £5, with a right of appeal to the Quarter Sessions, to be entered within twenty days from the time of the Conviction.

DELAYS IN CHANCERY.

June 5th, 1811.

Mr. M. A. Taylor moved the Order of the Day for resuming the adjourned Debate upon a Motion, "That a Committee be appointed to inquire into the causes that retard the decision of Suits in the high Court of Chancery."

Sir Samuel Romilly observed, that on a former occasion he had stated to the House the reasons which induced him to think that the Motion of his Hon. and Learned Friend should be agreed to, and he had heard nothing since to make him retract or alter the opinions which he then ventured to express. Since that period the Report, which was then expected from the Committee of the Lords, had been communicated to the House of Commons, but it appeared to him to contain nothing which ought to prevent the latter from going into the Committee moved for by his Hon. Friend. The proposed measure, of appointing another Judge to assist the Lord Chancellor in his Court, was one of such importance, that he thought it impossible to be carried into effect at so late a period of the Session, when so thin an attendance was to be

expected in both Houses of Parliament. An alteration in the constitution of the Court, which would be productive of the most serious consequences, required the most assiduous attention of both Houses. "I have many personal reasons" (said Sir Samuel Romilly), "for wishing to abstain from giving any opinion on this question; but considerations of public duty ought to supersede all others. The first novelty of the measure is, that it tends to establish a Judge in the Court of Chancery, who will not have to try original causes, but merely to decide upon appeals. This is an experiment, which no man who knows any thing of a court of equity, will think, ought to be lightly hazarded. The whole system of equity in this Country, is founded on the decisions of successive Chancellors from the time of Lord Nottingham down to the present day; and it is necessary that those who have to administer the equity laws of this Country should be in the constant habit of deciding original causes in the Court of Chancery. If the duties of the Lord Chancellor are too great for him to perform, it would be better to separate, from his office the duties of the Speaker of the House of Lords, or the decision of Bankrupt cases, than to take from him the decision of original causes, and that jurisdiction which constitutes the very essence of his office. I know it may be said that to separate Bankrupt cases

from the jurisdiction of the Lord Chancellor would diminish his emoluments too much. I do not think it would; but even if it should, it is a circumstance which ought not for a moment to stand in the way of an arrangement necessary for the public interest.

"I am utterly astonished at the meagre information supplied by the Report from the Lords' Committee. It states only what business has been done in the ten latter years of Lord Hardwicke, and in the ten last years. It gives no information whatever as to the business which has not been gone through, nor as to the causes of the delay. It appears by the Report, that from the year 1745 to 1755 the number of original causes decided was 1638; whilst in the last ten years the number is only 570. It does not appear, however, that the business of the Court of Chancery has increased of late; but it would be an unjust inference to draw from the statement in the Report, that it has actually diminished. The only way in which I can account for the business not having increased, is, that many points, which were doubtful in Lord Hardwicke's time, have since been settled. If I am wrong in any of the causes which I have assigned, I hope my Learned Friend opposite will set me right; though I cannot help regretting, that there are none of those Learned Gentlemen present who, from their practice in the Court,

would have been adequate to decide on this subject."

Sir Samuel Romilly concluded by observing, that from all the consideration which he had been able to bestow upon the subject, he thought that a temporary remedy was best adapted to the occasion, and he believed in his conscience, that if a commission to assist the Chancellor was appointed, all the arrears in the Court would be disposed of in the course of a year.

The House divided,

For going into the Committee	36
Against it	36

The numbers being equal, the Speaker gave his casting Vote in favour of the proposed Inquiry.

PETITION OF MR. FINNERTY.

June 21st, 1811.

Mr. Whitbread presented a Petition from Mr. P. Finnerty, complaining of the treatment he had received in Lincoln Castle. Mr. Secretary Ryder defended the conduct of the Magistrates and Gaoler of Lincoln, and attributed the hardships of

which Mr. Finnerty complained, to his (Mr. F.'s) misconduct in prison.

Sir Samuel Romilly said, that this was a case which deserved serious consideration. It was not merely the case of a private individual, but the case of the public. The statements contained in the Petition had not, in any degree, been controverted by his Hon. Friend, the Secretary of the Home Department. It appeared, that when Mr. Finnerty was sent to the Castle of Lincoln, there to be confined pursuant to his sentence, the Gaoler locked him up in a solitary cell appropriated to Felons. "Upon what authority" (continued Sir Samuel Romilly) "did the Gaoler venture to do this? The Prisoner was not sentenced to solitary imprisonment. Indeed, no inconsiderable doubts have been entertained as to the legality of such a punishment altogether;—whether, in any case, it is sanctioned by the Laws of England. Be that, however, as it may,—admitting that such a distinction in the mode of imprisonment does exist, still I would ask whether it is a distinction which ought to depend on the caprice of a Gaoler? The King's Bench exercises no such power. That Court, indeed, may sentence one man to twelve months,—another to eighteen months,—another to two years imprisonment; but what is the difference of a few months, more or less, compared with that of solitary confinement in a Felon's

Cell, shut out from all intercourse, and denied even the means of earning a subsistence? And is this fearful discretion,—is this power of inflicting the almost severest of human punishments, to be left in the hands of a common Gaoler?

"Another consideration in this case is, that the punishment of the poor man would be essentially different from that of the rich, though confined for the very same offence, and under the very same sentence. From Gaolers this may not be so wonderful; but what shall we say to Magistrates who can sanction such a distinction,—who, when appealed to in behalf of this unhappy man, had the hardihood to tell him, that for three guineas a week more, he might be accommodated with a better apartment? What! Was this language for Magistrates,—for men, officially standing between the Prisoner and oppression, to make use of in answer to an application for redress?—This is a circumstance which cannot rest here. It is certainly very late in the Session; but late as it is, this fact, as well as many others,—particularly the power so shamefully usurped by the Gaoler, ought to be made the ground of a Parliamentary Inquiry."

The Petition was ordered to lie upon the Table.

NIGHTLY WATCH AND POLICE OF THE METROPOLIS.

January 18th, 1812.

Mr. Secretary Ryder moved, "That a select Committee be appointed for the purpose of inquiring into the state of the Nightly Watch in the Metropolis, and its adjacent parts." Sir Samuel Romilly expressed his surprise at the confined terms of the Motion which had been made by his Right Hon. Friend. No one, at all acquainted with what had recently passed, and with the alarm and terror which had spread throughout the Metropolis, but must have expected that some more extensive measure would have been resorted to, than the one which was then under the consideration of the House. "A Committee" (continued Sir Samuel Romilly), "appointed on such an occasion as the present, should have the power of extending its inquiries into the cause or causes of this alarming increase of crime. A comprehensive view of the whole subject can alone produce the desired effect. Whatever opinions may be entertained of the causes, there can, unfortunately, exist no doubts as to the fact, that an increase of crimes, of the most atrocious character, has been

gradually but regularly taking place during the last five or six years, within the cities of London and Westminster. Without adverting to the Quarter Sessions, the number committed for trial at the Old Bailey alone, is such as cannot fail to excite the surprise of those unacquainted with the subject. From the returns now lying on the Table of this House, it appears that there have been committed to take their trial, for felonies of various kinds, at the Old Bailey,

In the year	1806	899
	1807	1017
	1808	1110
	1809	1314
	1810	1424

The number committed during the year 1811, has not yet been ascertained; but from the above statement, it appears, that there has been an increase of committals during the short period of five years, of 525; and this too, during a time of war! For, it is a received maxim, that fewer offences are committed in a period of war, than in a period of peace, many daring characters being then embarked in the service of their Country, and rendered useful against her enemies abroad, instead of becoming dangerous to her citizens at home*. With all its calamities, it still in some

* *They* strike, blest Hirelings! for their Country's good,
And die, who living might have prov'd her shame;

slight degree contributed to our domestic security.* But in the present state of this Country, so far from being able to calculate on this solitary advantage, we are presented with the melancholy phenomenon of a protracted war, and a continually increasing measure of offences against the repose and good order of society.

"What, then, it will be right to inquire, are the causes to which this augmentation is to be attributed? Many might be urged; but at present I will only notice a few, with a view to impress upon the House, the absolute necessity of going into a more extensive examination of this subject, than can be embraced by a Committee appointed to inquire into the state of the nightly watch. The first cause, perhaps, is the system of punishment, so long, and I will say, without meaning offence to any individuals, so obstinately persevered in. I allude not here to the frequency of capital punishments, but to the punishments less than death, and, above all, to promiscuous im-

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Perish'd, perchance, in some domestic feud,
Or in a narrower sphere wild Rapine's path pursued.
Child Harold, Canto I.

* Yet, even this advantage, resulting from a state of war, is more than counterbalanced by the incalculable evils which are occasioned to Society, by having thousands of its otherwise orderly and inoffensive members familiarized with scenes of rapine and bloodshed.

prisonment in Gaols, and on board the Hulks, where men, for comparatively slight, and men, convicted of the most heinous crimes,—the youngest and the oldest villains, are confined together. After studying for years, these unfortunate persons are thrust out of these Colleges of Vice, to practise upon Society the lessons they have learnt. I know not whether the fact be so, but certainly a very general belief prevails, that the numerous crimes lately perpetrated, are, in a great measure, owing to a recent unusual discharge of Convicts from the Hulks, to whom no moral instruction had been afforded, no trade had been taught, no employment given. It might have been hoped, that the late examples would have convinced Ministers of the absolute necessity of some alteration in the Criminal Law; but on this point, it is now unnecessary to enlarge, as a Committee has been appointed upon the subject, whose Report will be hereafter discussed.

"Another cause of many of the evils which now exist, will be found in the very constitution of the Police itself, which tends more to the encouragement than to the suppression of crimes. Here, at least, some inquiry may take place, even though the House should not feel disposed to adopt any thing so extensive as the reformation which I would propose. Among many bad practices in the Police, I will state one, which, in my opinion,

abounds with the most mischievous consequences; I mean the rewards, both public and private, given for the detection of offenders. When I recollect how much the prevention of crimes is supposed to depend on the police officers, who alone are acquainted with the haunts of the most abandoned characters, and can conceal or discover them at their own discretion;—when I recollect at the same time, how much more it is their interest to multiply than to repress crimes;—when I reflect upon all this, which flows as a consequence from the Acts of William and Mary, and of Queen Anne, offering forty or fifty pounds for the apprehension of particular offenders, it is hardly possible to doubt, that unless the police officers, (of whom I do not mean to say any thing severe) are men of the most refined principles of humanity and morality;—unless we are to suppose them uninfluenced by any of those motives which actuate the great mass of mankind, we cannot, for a moment, doubt, that they will prevent the detection of an offender, until his crimes shall have increased his value, by increasing the reward for his apprehension. I have been informed that there is scarcely a chance of recovering stolen property without advertising a large reward, which operates in a manner not unlike that of expedition-money in any of the public offices, namely, by expediting the business of one individual at the expense of all the others.

Another consequence resulting from this is, that, besides the mischief accruing from the loss of the property in the first instance, the sufferer must lose more before he can get at the offender.

"In the year 1785 a Bill was brought in, proposing an alteration in the laws of the Police,—not indeed by abolishing the system of rewards altogether, but by vesting in commissioners the discretion of conferring them according to the deserts of the different officers. Even this, though perhaps an improvement, was not free from objections. Indeed, rewards ought, in my opinion, never to be given to police officers. It is their duty, as far as possible, to detect offenders without regard to the particular species of the offence, or to any other object but the general prevention of crime. At present, it is well known that police officers go into places open for the reception and entertainment of thieves and other abandoned characters, as openly as a merchant would go to the Exchange, or a gentleman to that part of his manor where he expected any particular kind of game. I do not undertake to say that this is *generally* done, but it is the general impression that it is done; and when such large sums are voted for the police establishment, as have been voted this very night, can it be endured with patience that such abuses should exist in the face of decency and common sense?

"My Hon. Friend has talked of other coun-

tries, as affording greater and more frequent instances of atrocity than this. Good God! where do those countries exist? I know them not,—I have never heard of them.—I have never read of whole families destroyed by the hand of the murderer in any country but this. In Paris, there is a large proportion of crime, but I have never known any such flagrant enormities during my residence in that capital at different periods. My Right Hon. Friend wished to console the House by a comparison with other countries; but I have never heard of such boundless confidence in guilt,—such progressive insolence, as has been recently manifested in the British Metropolis. My Right Hon. Friend has talked only of the Nightly Watch; but let me ask him where is the Daily Watch,—or whether all the precautions of the former will provide a remedy against the daring highway robberies committed in the open day? Perhaps, however, I may be premature in my complaints;—perhaps my Right Hon. Friend has some plan in store to meet this crying evil; but I must say there is much more than he has stated, both in the police and in the state of crimes which loudly demands the interference of this House.

"There are other causes of less magnitude, perhaps, than those which I have already mentioned, which conduce to the depravation of the public morals. Amongst these is the encouragement of Lotteries. The paltry gain of £500,000 a year,

is a poor compensation for the great evils they produce. It is far from my wish invidiously to introduce any thing like politics into the present discussion; but I cannot help thinking, that the disposal of commissionerships and other offices, operates in no small degree, as an inducement with Government to sanction the continuance of Lotteries, productive, as they are, of such incalculable mischiefs. There are many means of moral improvement, such as the instruction of the poor, which are well worthy of consideration, but which I will not enlarge upon at the present moment. I have only to express my hope, that the Motion of my Right Hon. Friend will be withdrawn, and submitted to the House in some more comprehensive form."

An Amendment was afterwards moved by Mr. Abercrombie, extending the inquiry to the Police of the Metropolis.

ECCLESIASTICAL COURTS.

January 23d, 1812.

Lord Folkstone, after ably stating many of the abuses which existed in the inferior Ecclesiastical Courts, moved "that a Committee be appointed

to inquire into the state of the jurisdiction of the inferior Ecclesiastical Courts, and to consider whether any reformation is necessary to be made therein."

The question having been read from the Chair, a debate ensued, in which Sir William Scott allowed that some abuses had arisen in the inferior Courts, but contended that it was impossible to prevent them in every instance. Sir Samuel Romilly said, that he was far from being satisfied by the arguments of the Right Hon. Gentleman, as to the propriety of refusing the proposed inquiry. Cases of extreme hardship (for such the Right Hon. Gentleman had himself designated them) were laid before Parliament; and was it not the duty of the House to see whether they had arisen from a defective state of the law, or from the misconduct of those who administered it? For his own part, he believed that those cases originated altogether in the constitution of the Ecclesiastical Courts, and in the faulty state of the law. This seemed also to be the opinion of the Right Hon. Gentleman himself. Every Gentleman present had heard the decisive language in which he had condemned the present state of the law, and he (Sir S. Romilly) trusted it would operate as an additional inducement with the House to assent to the Motion, that the Committee would enjoy the powerful assistance of the Right Hon. Gentleman in carrying the requisite

improvements into effect; there would be then no hazard of any cry of innovation. The Right Hon. Gentleman was known to entertain too sincere a respect for ancient usages, and to be too warm an admirer of established institutions, to be in danger of meeting that resistance and difficulty, which any attempt of reformation proceeding from himself would probably encounter. The Right Hon. Gentleman would be sure of the support of Administration in this great work. If he willed a reformation, it was done.

"This subject" (Sir S. Romilly then continued) "has long worn a suspicious aspect. I believe I am correct in stating, that no alteration or legislative provision whatever has been enacted with respect to the Spiritual Courts, since the period of the Reformation. They exist, therefore, in all their ancient rigour, and with those abuses which time seldom fails to leave even in the purest institutions. What is the sentence of Excommunication? What are its effects? It disqualifies the party from taking the Communion; it deprives him of the rights of Christianity, and incapacitates him either from giving evidence, or commencing a suit, in any Court of Justice. The wretched woman whose case has been detailed, although not yet an adult, was confined in jail two years among malefactors. During all that time, and in addition to all the other misfortunes under which she was then labouring, she was incompetent, even in

the case of violence offered to her person, to prosecute the violator. Had a murder been committed in her sight, her evidence must have been rejected, and the crime have thus, perhaps, remained unpunished. A person in her situation is deprived of every civil right, and put out of the pale and protection of the law. She enjoys no privilege,—she can perform no duty. In ancient times, the most enormous crimes alone were thus visited; but now the sentence of Excommunication is extended to the non-payment of costs, or to the non-appearance of the party cited. This was so gross, as to be complained of by Bishop Gibson, who in his Codex Juris Ecclesiastici Anglicani observes, that punishing trivial offences in this way, has brought the whole system into disrepute. From the Journals of the House of Lords, also, it appears, that, on the 1st of April 1606, a complaint was made of the abuse of this power, in a message from the King. It was there stated, "that His Majesty was informed of great abuses concerning Excommunication granted by ecclesiastical officers, very often upon trivial matters. And though contempts, generally of great or less quality, be punishable by the laws of the realm, according to their several natures; yet, considering Excommunication is the greatest censure that can be given, His Majesty holds the same unfit to be but in great matters;" and the Lord Chancellor, the Attorney General, and Mr. Serjeant Crook, were directed

to bring in a Bill to rectify the abuse. That Bill, however, was either not prepared, or, if brought in, was never passed; and the evils which were complained of at that time, have been allowed to exist to the present moment. But why do they still exist? Why have they not been more loudly complained of? Because the mischief has fallen exclusively on persons in the lowest situations of life.

"No one will dispute that the fair reputation of a woman is justly the subject of legal protection. But the coarse expression of an illiterate and low-bred woman, directed to another in the same class of life, is not fraught with those injurious consequences which the slander of the higher ranks of society, couched in courtly phrase, is likely to produce. Yet, if such a low character happens to drop an offensive expression, she is hurried to gaol, from whence there is no chance of liberation, except some humane person interferes and pays the costs.' The language of the Right Hon. Gentleman was misplaced, when, in adverting to the case stated in the petition, and looking to the parties connected with the suit, he spoke in such general terms of female reputation. There is not the least reason to suppose that any injury will occur to either of the parties in consequence of the coarse and vulgar language they have made use of. The Right Hon. Gentleman has asked, if a woman, at one period of her life, has been guilty

of an indiscretion, is she always to be reminded of it? Certainly not. But this does not apply to the case stated in the petition; for the complaining party was mistress of a house of ill fame, at the very time the offensive words were spoken; and it is shocking to think that a woman, for applying that name, which the other party seems so well to have deserved, should pass two years of her existence in a prison. The general and delicate language used by the Right Hon. Gentleman, does not answer what my Noble Friend has adduced, but merely glosses the matter over. To me, it really appears, that this is a subject, calling for the most serious inquiry.

"The Right Hon. Gentleman has said, that the Ecclesiastical Courts have not the power of imprisonment by a summary process. I am aware of that; but they have that privilege through the intervention of a civil Court; and they have at the same time, and by the same process, an opportunity of increasing the expense, and depriving an individual of every civil right; they have, in fact, the worst possible means of imprisonment. The Country is highly indebted to the Noble Lord for agitating this question; and I trust that the misfortunes of this wretched woman will be the means of effecting a reformation for which posterity may have reason to be grateful. I know not how it can be seriously contended that the inquiry will have the effect of bringing Courts of Justice

into contempt. With as much truth I have heard it asserted, that a conspiracy exists, to degrade and overturn all the ancient establishments of the country. If they have enemies, the worst and most dangerous are those, who, blinded by prejudice or self-interest, are ever ready to vindicate their defects and to resist all improvement, or accommodation to the opinions, the manners, and the circumstances of mankind. In the enlightened age in which we live, antiquity will not make abuse respected. To be respected, our institutions must be rendered respectable. Let every complaint against them be heard; let every thing tending to excite suspicion or distrust either in the laws or in the administration of them, be removed, or (if not necessary to be removed), at least explained and set in its true light before the public eye. Then will there be no danger of our establishments falling into contempt;—then will they enjoy the merited approbation and support of all reasonable and good men."

After a few words from the Attorney General, who admitted that the law might be defective, and on an understanding that Sir William Scott would bring in a Bill to remedy the evil, Lord Folkstone consented to withdraw his Motion.

BILL TO REPEAL ACT 39TH ELIZABETH.

February 7th, 1812.

SIR Samuel Romilly moved for leave to bring in a Bill to repeal the Act of the 39th of Elizabeth, c. 17—which made it an offence punishable with death in soldiers or mariners to be found wandering about the realm without a pass. The House would not, he thought, deem it expedient to continue a Law, which had not been acted on for more than a century, and which indeed was of such a nature, as to be impossible to be acted on in the present times. Mr. Justice Blackstone, in referring to this Statute, in his Commentaries, had said that it was a disgrace to the Legislature, and ought not to be permitted to remain on the Statute Book.

In reply to some observations of Mr. Lockhart's, Sir Samuel Romilly added, that this was not the only Statute of Elizabeth which might be considered a disgrace to the Statute Book. He could refer the Hon. Gentleman to an Act of that period, by which it was made a capital felony in any person above fourteen years of age to have been for the space of one month in the company

of persons calling themselves Egyptians *. There was another passed in the reign of James I. which made it a capital offence to commune with the devil †. The language of these Acts was borrowed from those of their predecessors Henry VIII. and Mary.—With respect to the 39th of Elizabeth, on reference to the Statute Book, it would be found to have been confirmed by the 16th of Charles, which expressly said, "it should be continued till Parliament made some other law on the subject."—Men's lives, he thought, ought not to be subject to such laws.

Leave was then given to bring in the Bill.

MUTINY BILL—MILITARY FLOGGING.

March 13th, 1812.

On the third reading of the Mutiny Bill, Sir Francis Burdett proposed a Clause, forbidding the cruel and degrading practice of Flogging. The Motion was opposed by Mr. M. Sutton, Sir George Warrender, Lords Palmerstone and Cochrane, &c.

* 5 Eliz. c. 20. This Act was repealed by 23 Geo. III. c. 51.

† 1 Jac. I. c. 12, repealed by 9 Geo. II. c. 5.

and supported by Mr. Bennet, Mr. Whitbread, and Sir Samuel Romilly.

Sir Samuel Romilly said, "I cannot agree with those who think that this Motion ought to be rejected on account of the arguments with which the Hon. Baronet has introduced it. Not having had an opportunity of hearing those arguments, I can pass no opinion upon them. Whatever they were, they cannot influence my vote, which is founded solely on the intrinsic merits of the Motion itself. The real question before us is, whether Flogging shall be continued or abolished. For my own part, I can have no hesitation in saying, that I think it ought to be abolished. It is a most disgraceful and degrading mode of punishment, and can have no other effect than to debase the mind of the man upon whom it is inflicted.

"But it is not only the punishment itself,—but the excess to which it is carried, that deserves condemnation. I have recently heard of a case which occurred at the Cape of Good Hope. Two Soldiers, of the British army, were tried by Courts Martial there. One of them had deserted, and was sentenced to be shot, which was carried into immediate effect; and for this, the highest offence a soldier can be guilty of against the discipline of the army, he was sent out of the world in a moment. The other, for some crime of much less magnitude, was doomed to receive a thousand

lashes; but when he had suffered 224, the Surgeon represented he could bear no more. He was therefore remanded to prison, until he should be able to receive the remainder; but such was the effect which in that climate was produced by this primary laceration of his flesh and his feelings, that he died in a few hours. Thus, was a human being, for an offence which ought to have been visited with a mild punishment, sentenced to bear four times more than God had enabled him to endure. Who can deny, that it would have been much better to have brought out the poor wretch, and shot him at once? It is horrible to think of a man's receiving several hundred stripes given him in the manner in which I have been informed this mode of punishment is generally inflicted. Even a punishment of one hundred lashes, is one of excessive and monstrous severity; and cannot fail to produce in those who suffer it, a dissatisfaction with themselves, and a contempt of every honourable feeling which ought to distinguish the character of a Soldier. I should be sorry to speak too warmly on the subject, but I totally differ in opinion from those, who think the discussion of it mischievous and impolitic. On the contrary, it has already been productive of the most salutary consequences. If the arguments of the Hon. Baronet are such, as they have been represented to me, I certainly am unable to concur

in them; but I approve of his Motion. I think it is my duty to support it;—and, for the discipline of the Army,—for the honour of the Country,—and for the best interests of humanity, I trust, that it will be carried by the vote of this House."

A division took place:

Ayes - - - - - - - - -	6
Noes - - - - - - - - -	79
Majority against the Motion -	73

On the 15th of April the subject of Military Punishment was again brought before the House of Commons, by the Hon. Henry Grey Bennet, who moved for a return of the number of corporal punishments inflicted in the Regular Army,—Militia,—and Local Militia, for the last seven years, distinguishing the number of lashes in each case, and the crimes for which they were inflicted. The Motion was opposed by Mr. Manners Sutton, Mr. Wilberforce, Mr. Lockhart, Mr. Perceval, &c. and was supported by Sir Francis Burdett, Mr. Brougham, and Sir Samuel Romilly, the latter of whom expressed himself to the following effect:

"In resisting the present Motion, the Gentlemen on the other side are not perhaps aware of

the mischief that they do to the very cause which they seem so anxious to support. The production of the paper called for, however great the number of punishments it might contain, would never create so deep, and so unfavourable an impression on the public mind, as this pertinacious refusal of all information whatsoever. What are the exaggerations to which this conduct on the part of Ministers is not calculated to give rise? What is the conclusion, which must be drawn from it, even by the most cautious and reflecting? Why, it will be naturally asked,—if the account is likely to show so great a diminution of punishment, as has been intimated from the other side; why should they run the risk of those misrepresentations and exaggerated reports, which they so loudly deprecate, but which their resistance to the present Motion cannot fail to excite?—It is not the statement of the Hon. Baronet (Sir F. Burdett), it is not the discussion of this subject in the House of Commons;—but it is the proceeding of the Gentlemen opposite,—it is, I repeat, their mysterious refusal of all evidence that tends to create exaggeration and alarm. But the production of the paper sought for, it is said, will lead to the abolition of corporal punishments altogether.—Why?—Unless indeed the return were likely to prove so enormous,—so indicative of cruelty and injustice, as at once to dispose of the

question, and to compel the House, by its interposition, to prevent the infliction of any such punishment in any future case.

"An Hon. and Learned Gentleman has said, that he wishes to revise the military code. Does he desire to do so without knowing what it is,—without any information whether it requires revision or not? The return sought for ought to be made,—even if the Gentlemen opposite are correct,—in order to remove false impressions. Or does any one say, that false impressions,—and particularly on a subject like this,—should be suffered to go abroad? Was there ever an assembly of human beings so infatuated as to sanction mistatements, with the means of exposition in their own hands?—to leave a question of this nature involved in all the mysteries and surmises of darkness, rather than with manly honesty submit it to the light and truth of day?—And here I cannot forbear to express my astonishment at the course pursued by my Hon. Friend behind me (Mr. Wilberforce). He disapproves of the present system of corporal punishment; he desires to see the evil removed; and yet he refuses to concur in any measure that tends towards that object. I trust that my Hon. Friend will see the propriety of altering his opinion, and that he will at least assist us in our endeavours to procure some information on a subject of so much importance. As to his fear of the army being taught to

look up to Parliament, does there exist any reason why they should not do so? If it is to Parliament that they owe their very existence and support; if it is from Parliament that they annually receive those Laws which have been deemed necessary for their better order and government,—to what power can they look up with greater propriety? What power can be more competent to inquire into the administration and effects, whether good or bad, of those laws which it has itself enacted?

"One of the greatest objections to the present system of military punishment is, that there exists no limit to it, but the mercy or discretion of Courts-martial. They may order the infliction of 5, or 5000, lashes, without control. But it is most important that they should in future know what they ought to do.—An Hon. Gentleman has said, that in the Militia nothing is to be feared, because the officers are frequently Magistrates, or have served upon Grand Juries. How correct this assertion is, may be gathered from the writings of military men, best acquainted with the subject, who have expressly stated, that corporal punishment is more frequent in the Militia than in any other department of the service; and Sir Robert Wilson has supported his observations (at least as to the frequency of this punishment in the Militia) by making it appear, that, if as many men should continue annually to

receive the lash for the next six years, as have suffered within these last two or three years, the whole seventy thousand men will have undergone this inhuman and degrading punishment.

"The great Commentator on the Laws of England has said that the rack and the knout are unknown amongst us,—that death, simple death, unattended with any circumstance of torture, is the severest infliction which the Constitution allows!—And yet we tolerate this species of punishment,—this refinement of cruelty;—we permit a fellow-creature to be driven to the very verge of existence, a Surgeon standing by to feel the pulse of the sufferer, and to pronounce at what moment exhausted nature can bear no additional infliction.—Then, when his soul is about to forsake his tortured body, and to leap into eternity,—then, indeed, the poor wretch is taken down from the halberts and removed into an hospital, where he is left, his body more at ease, but his mind still upon the rack, reflecting, that the faster his wounds heal, the nearer he is to the renewal of his sufferings, and that his life is thus cherished by his tormentors, only that it may be again subjected to their torments.—What is it that the Gentlemen opposite seem so much to dread? Is it discussion? They provoke it by their resistance to the present Motion. Yet, even according to their own acknowledgments, the discus-

sion of this subject has produced the most important benefits, since it has already had the effect of diminishing the evil in no slight degree. But the minds of the soldiery will, it is said, be inflamed by what passes here! They will be excited by the bare mention, in a deliberative assembly, of those sufferings, the very sight of which they are almost daily compelled to witness unmoved!

"The substitution of death would be comparatively merciful; for individuals have been known to fly into his arms, that they might be shielded from the lash. Let it also be remembered that the persons thus tormented and degraded, are not always voluntary victims. Thousands have been compelled to enter the army; whilst amongst those who have chosen this service, and who may, therefore, perhaps be said, of their own free-will and consent to have subjected themselves to the hazard of this punishment, how many of them, at the time of their enlistment, were mere boys, who had no power to dispose of their own property, but who were permitted,—nay, even tempted and encouraged to barter away their lives and liberties for a few guineas spent in licentious riot and debauchery."

Sir Samuel Romilly concluded by saying, that the account moved for ought instantly to be laid on the table.

The House divided:

Ayes	17
Noes	49
Majority against the Motion	32

CATHOLIC QUESTION.

April 24th, 1812.

Sir Samuel Romilly expressed his opinions to the following effect. "Sir, since I have had the honour of a seat in Parliament, I have given my support to every measure tending to remove the restrictions and disabilities under which the Catholics of these realms have been so long labouring; but I have never ventured, until the present moment, to obtrude upon the House the grounds of my former votes. I thought it my duty on those occasions to give way to other Gentlemen, whose sentiments were much more important to be known than mine. I am, however, desirous of stating for once, as shortly as I can, the motives which have actuated me in the conduct which I have hitherto pursued; and I am the more desirous of doing it, because I am sensible, that, upon this question, more than upon any other which has come under the consideration of Parliament,

no person can take part on the side upon which I shall give my vote this night, without being liable to have his motives misrepresented, and his conduct treated in the most uncandid manner. When we have seen that persons of high distinction in the country, from no other cause than the part they have taken on this subject, have had it openly stated of them in the public newspapers, that they had formally renounced their Religion, and embraced the Catholic faith,—when such representations have been made, and confidently given out to a credulous public, by persons who are constantly paying their court in the basest and most abject manner to those who are at the head of the government;—when, I say, such stratagems are resorted to against persons of the highest distinction, and whose whole lives may be said to have been spent in the view of the public, I can hardly imagine even that one comparatively so obscure as myself, will escape misrepresentation. I think it is right, therefore, to say that there are some of the doctrines of the Catholic Religion which I abhor. I detest that persecuting spirit, which two or three centuries ago seemed to actuate the professors of that religious faith, much more than any other description of Christians. I was educated from my earliest infancy with these impressions. I am descended from Protestant ancestors, who were themselves the victims of persecution, and the prejudices produced on my mind

by my education in early life, it has required all the efforts of my maturer reason to shake off. But it is not because my own privations, or the sufferings of my ancestors, have had their source in the Roman Catholic persecution of a remote time, that I will consent to make myself a party at this day to the persecution of my fellow Christians of any description.

"It has been represented by a Right Hon. Gentleman, who has spoken lately in the debate, that this is not a question of toleration. Sir, I consider it to be purely a question of toleration;—a question, in its consequences, affecting the religious liberty not of the Catholics of Ireland only, but of every sect of Christians in this Country, who dissent from the doctrines of the established Church; and it is because I think that the tendency of this measure will be to relieve them all from the disabilities under which they now labour, that I support it. Never more (notwithstanding the arts which have been lately resorted to), never more, I trust, shall we behold the Protestant Dissenter so blinded to his own interests, as to be again induced to make common cause against the Roman Catholic. The time for such delusions is, I hope, passing away; and the former will at length see, that, in uniting against the latter, he is preparing arms against himself;—that the cry in which he is now invited to join against the Catholic, will, at a future period, be raised with equal violence

against himself! This, indeed, in one of the petitions on the table is hardly disguised. It is not POPERY that is obnoxious, but RELIGIOUS LIBERTY. When it is stated that this is not a question of toleration; but whether political power should or should not be given to certain individuals; I would ask, can it be contended that the disqualification of men from holding places of trust is not a penalty? Can this be contended, while we have so many Acts of Parliament which punish different offences with incapacity to hold offices? It is not true, however, that the disabilities to which the Catholics are subjected can be justified on the ground of any expediency of withholding from them political power. Some situations from which they are excluded would confer no political power whatever. Catholics, in Ireland for example, who are of the same profession with myself, are not permitted to hold the office of King's Counsel. Long as I have held that situation, I have yet to learn what is the political power that belongs to it. King's Counsel have the privilege, indeed, of pre-audience in Courts of Justice;—the privilege of leading in causes and addressing juries, instead of being confined to opening the pleadings and examining witnesses; but power of any kind over any living being they have none; and this important privilege of pre-audience, it seems, in Ireland, cannot be safely allowed to those whose religious opinions happen not to be the same as

those of the makers of the laws. Can it, however, be truly said, that being disqualified from rising to the highest situations to which political power does belong, is no injustice done to them?

"What! is it no hardship to the Catholics of Ireland to be told; 'You may enter, indeed, into professions which are highly honourable to others, but by *you* they must be followed merely as the means of gaining a subsistence. As to all the proud objects of honourable ambition,—as to every thing which can ennoble your labours in your own eyes and in the eyes of others,—as to the hope of ever rendering yourselves eminently useful to mankind, or gloriously distinguishing yourselves by services to your country;—as to the prospect of establishing a reputation which shall live in the memory of a grateful posterity, of becoming an example which shall serve to kindle the virtues of a future generation, and of leaving a name, which your children shall never hear pronounced but with a glow of honest pride and pious exultation;—as to all these animating hopes and prospects, they must be by *you* for ever relinquished.—You may toil on in the humble situation where gain must be your only object:—you may see honours and distinctions distributed to those around you; but *you* must be for ever precluded from them. That profession, which, to your colleagues, leads to the most eminent station, shall be to *you* an unhonoured, though profitable trade.'

"Can it be possible that these distinctions should not operate in some degree to humiliate and degrade a man in his own eyes, and in the eyes of those around him? What was the profession of the law in France previous to the Revolution, compared to the same profession in our own Country?—It was comparatively a degraded profession, and for this very reason, because, however lucrative, it led to no honours,—no high offices of state. It was one of emolument alone. I would appeal to the Right Hon. Gentleman opposite, and I see many Gentlemen opposite once in the same profession, but now in possession of some of the highest offices of the state—I would appeal to them, and I appeal to you, Sir, for I remember you were once in that profession, and I would ask any of my Right Hon. and Learned Friends around me, whether they would have entered that profession under the restrictions with which the Catholics are obliged to enter it? Was it, I will appeal to these Right Hon. Gentlemen, was it as a means of getting money, of earning a mere livelihood, that they entered it, or was it not rather as a path, leading to the highest offices of the state, and holding out to their youthful imaginations a prospect of one day emulating the HALES, the HOLTS, and the SOMERS's? Any man who has reflected upon the sources of human ambition, will find that these alone are the adequate incentives and

rewards of virtuous and honourable exertion. It is the hope of these distinctions that enables him to rise superior to the disappointments and the labours of an arduous profession. These are the rewards to which he must look as the ultimate object of his ambition. Would these Gentlemen, I ask, enter the profession if it were so degraded in this country?—Would they have consented to follow it as a kind of trade, in which they might make the most of their words and their knowledge? If they would not consent to this, I would ask, how can they expect that harmony, peace, and contentment can exist in Ireland? Do they think that exclusions of this kind can fail to excite animosities and discontents? But why are the Catholics excluded from all offices, and from all situations of honour?—Because those places have something to do with political power. If this is the criterion of your safety, you ought to carry the principle farther, you ought not to suffer your Catholic soldiers to be made corporals or serjeants, and still less captains or colonels;—you should suffer none of them to be jurymen or magistrates, because they all exercise political power.

"I confess that I was very much surprised at the conclusion of the speech of the Hon. Gentleman, who spoke last but one from the opposite side of the House (Mr. Leslie Foster). From every thing that fell from him, I should have con-

cluded that he would have voted for an inquiry.—He told us, that the Catholic religion is not a certain and fixed thing, but that it has varied from time to time, and that it is different in one country from what it is in another. In this I concur with him, and I therefore think his speech an extremely good answer to the arguments of the Right Hon. Gentleman who spoke some time before him (Mr. Yorke), and who has been telling us of the general Councils of ancient times, from which he has produced doctrines which he assumes must be the Roman Catholic doctrines of the present day, the Catholic religion being, as he contends, necessarily the same now that it ever was. Now, the House must judge which of the two representations is the correct one. However, the Right Hon. Gentleman says, he will never be content to relax the laws against the Catholics, until the decrees of former general Councils are rescinded by the decrees of other general Councils. —Sir, the most eminent book that was ever written against the Protestants, was by the celebrated BOSSUET, entitled, The History of the Variations of the Protestant Churches. The charge, however, was retorted against himself, and he was answered by a History of the Variations of the Catholic Church, in which it was shown how much the Catholic Church had differed from itself at different times.

"Happily, Sir, these variations have taken

place, and the Catholic religion is now as different from what it was in former ages, as it is from any thing which the adherents of Ministers have represented it to be at the present day. I remember in the celebrated work of Mr. Burke on the French Revolution, he has well stated, that early in the progress of that Revolution, those who directed the public opinion in France, as some men have attempted to direct it in this country, and who exposed upon the stage the massacre of St. Bartholomew, and the crimes of Charles IX. and the Cardinal of Loraine, did it not to excite in the people a detestation against persecution, but to inflame their minds to fresh outrages. Their conduct was exactly the same as that of the adherents of our present Ministers; who, when either in quarto volumes, or in pamphlets, or in inflammatory hand-bills, they publish Histories of the Inquisition, and hold up the cruelties of Queen Mary, and the fires kindled in Smithfield, to our view, do it not to excite our horror against persecution, but to kindle a fresh spirit of persecution, and to give it a new direction. I am far from imputing any such motives to the Hon. Gentleman who spoke last, on the opposite side; but I must say, that a part of his speech,—without intention, I have no doubt,—was pretty well calculated to further the same object. In reverting to the history of former times and to obsolete records, I do not think it fair to charge indivi-

duals,—the innocent descendants, perhaps, of very bigoted and cruel ancestors,—to charge them with the conduct of their forefathers, and to excite against them a spirit of resentment, on account of the errors of past times. I do not impute to him that intention; but what (I ask) could be better calculated to inflame and influence the passions against the Catholics of the present day, than talking to us of the cruelties and barbarities of 1689 and 1690, and of the bigotry of the Jesuits at that time? It is just as fair to judge of the present Catholics by the conduct of their ancestors, as it would be to judge of us at the present day, by the intolerance that was evinced by the Protestants of past times; and certainly, if we are to be considered as sitting in a judicial capacity, and as called upon to decide a question of justice between the Catholics and the Protestants, those circumstances should be brought to our recollection, because they would be just as well calculated to answer the same object.

"I believe there is no sect of Dissenters more innocent and unoffending in their doctrines and their practice than the Anabaptists of the present day; and yet, how triumphantly, though unfairly, might they be told of the bloody and violent atrocities of JOHN of LEYDEN? Are not, then, the justice and the reason of such conduct, as strong in the one case as in the other?

"But, Sir, I was observing, that the Hon.

Gentleman has very much surprised me, because, after telling us that the Catholic Religion is different in one Country from what it is in another, and that the Catholic Religion, in Ireland, has something of a peculiar character in it, different from the Catholic Religion in any other Country ——[*Mr. Foster signified his dissent.*]

"If I am wrong in any interpretation of what the Hon. Gentleman said, I am right in stating, that there are very various opinions upon the subject on the same side of the House. How then are you to decide upon this matter? What are the peculiar doctrines of the Roman Catholics of Ireland? Who knows what they are? Did not the Hon. Gentleman address the House as if he professed to give information of what those peculiarities were?"

MR. FOSTER.—"No."

SIR SAMUEL ROMILLY.—"Then the Hon. Gentleman cannot give us information; and yet he refuses to institute an inquiry upon the subject! I certainly thought that the information which the Hon. Gentleman gave us, decided his own vote, and was intended to decide the votes of all other men conversant upon the subject. In the same manner it is, that he has professed to inform us of the bad system of education in Maynooth College. He stated, that the information he had received respecting the system of education adopted at Maynooth, was one reason why the House should

divide against the present Motion. [Mr. FOSTER, "No."] If I am wrong again, I can only lament my unfortunate incapacity to understand the Hon. Gentleman. I must, therefore, take a middle course, and suppose that the House has received that information; and without forming any opinion one way or the other, seriously call upon it to enter into so fit a subject of inquiry, in order really to know what are the tenets of the Roman Catholics of Ireland, at the present day.

"Then the Hon. Gentleman says, that the Priesthood of Ireland possess more influence than the Catholic Priesthood do, in other countries. Perhaps they do. But to what, I would ask, is this to be ascribed? It is to be ascribed to the disabilities to which they are subject; but much more to the grievous penalties under which they laboured, not long since. Driven to despair by the cruel enactments passed against them, they found protection only in their Religion; and to this must be ascribed the influence of the Clergy, who ministering to the comforts, and healing the wounded feelings of their flock, necessarily excited in their bosoms reciprocal affection and esteem. There never was a country in which the Clergy, when persecuted, did not obtain an influence over their flocks. It is natural that they should, because the risks they run, and the hardships to which they are exposed, cause them to be venerated as Saints and as Martyrs. Shall we, then, after giving this

ascendancy to the Clergy, by our impolitic and cruel Laws (I am not speaking of the laws of this day, but of those that were in force not many years ago): shall we, for this reason, continue the unjust disabilities which still remain, and thus punish them for that, which is, in truth, the work of our own hands? I would ask, too, whether this very assertion, that the Roman Catholic Priesthood of Ireland have an influence greater than is possessed by Priests in any other parts of the world, is not of itself a fit subject of inquiry.

"A great deal has been said, upon this and former questions, respecting the danger of suffering a Priesthood, the tenets of whose Religion are hostile to the established Religion of the State, to remain in spiritual dependence upon a foreign power. I cannot imagine how any gentleman, who has the free use of his understanding (I do not mean it offensively to any man), but how any man who allows himself the free use of his faculties, can see any such danger at present. Whatever danger was to be dreaded formerly from Popery in Ireland, I am confident that there is none now. If we appeal to the history of past times, for the danger that we are told to apprehend now from that circumstance, and take it as the rule by which we are to judge on the conduct of the Catholics at present, that danger never has been, and never will be removed. But if we wish to do justice to this question, we must not look to two

or three centuries past, but to the times and circumstances under which we live, and judge of the Catholic Religion as it is *now* preached and practised. That spiritual authority, which once maintained a political dominion over the whole Christian world, is for ever gone;—that power, which shook every Catholic Monarchy in Europe with apprehension and alarm, is now no more. Its thunders are hushed, or disregarded in the advancing light of the present age.

"I certainly shall not fatigue the House by enlarging upon the historical illustrations which might be resorted to upon this subject. But there is one very striking fact which took place at no very distant period of time, and which may serve to show the impolicy of the course we are pursuing. I mean the conduct of the King of Prussia towards Silesia. Frederick at first set up some obscure and not very intelligible claims to that Country; he then invaded and conquered it, and it was finally most reluctantly ceded to him by Austria at the peace of 1742.

"The Catholic Religion was the established Religion of the Country, which might well be supposed disaffected to its new Protestant Monarch. Its ancient attachment too to Austria, and its local situation between the Austrian and Prussian dominions, might well render the power of the Catholics formidable to the King of Prussia, who was not even acknowledged at this time by the

Pope as King, or styled by any other title at Rome, than that of *Marquis of Brandenburgh.* And yet what, under all these circumstances, was the conduct of that great Monarch towards Silesia? Did he attempt to persecute or destroy any of his Roman Catholic subjects? Did he think it politic to shackle, or deprive them of any of those privileges which they had theretofore enjoyed? Did he suppress any of their Catholic Universities? Did he attempt to remove any of their Catholic Judges? Did he attempt to deprive any Catholic Bishop of his spiritual influence and authority? No;—that magnanimous Prince was too wise a man. And when that policy was advised by some of his Ministers, he rejected it with disdain, and pursued that course which tended so much to add lustre and greatness to the crown he wore. Undoubtedly, he was a man of no religious scruples. *(Hear! hear! and a laugh, from the Ministerial side of the House.)* Certainly, I admit, that he was wholly indifferent about religion. But is this to be considered then as a question of religious difference? Will Gentlemen put it on that footing?—If they will own that their aversion to the Catholics is because they are of a different Religion from themselves,—if it is from their extreme *orthodoxy*, that they oppose the Catholic claims, I have nothing more to say: but I understood that this was a mere question of policy, and

so considering it, a more striking and instructive example than this can hardly be produced.

"The supposed danger of having political power in the hands of those who were of a different Religion from the Monarch, was thought so great, that it is said to have been proposed to Frederick, that he should become himself a Catholic. If such a proposal was made, he rejected it, though certainly from no religious scruples, and he adopted that which appears a remarkable proof of true wisdom and princely greatness. He secured the affections of the people by establishing religious Liberty; by leaving them in possession of their Universities, and their Bishops; by giving commands in his own army to their Generals, and making them all eligible to offices of trust like his other subjects. By these means, the great Frederick, notwithstanding the threatened dangers of the Papal See, found in the Silesian Catholics the most attached and well-affected of all his subjects.

"Sir, there is a mode of conduct adopted on this question, which appears to me, upon a subject of this kind, most uncandid and unjust. Is it by looking into some supposed tenets of their religious faith,—by taking them in their strictest sense, and then ascribing to every person professing that faith, the adoption of those tenets, and of all the most odious consequences which can be inferred

from them—is it, I ask, by such a test, that the Catholics of the present day ought to be judged? Is this either candid or just? Should WE, who are of the established Religion, think that we were very candidly treated if we were dealt with in the same way? If any person looking into the Articles of our Religion, and finding there that the Athanasian Creed is adopted and declared to be of undoubted authority, were thence to infer, that any member of the Church of England professes, that an all-merciful God has doomed to never-ending torments, all those who do not firmly believe what he has not given them understandings to comprehend? And yet this is exactly as the Roman Catholics are dealt with by those who ascribe to each individual of that faith, all that they can find most objectionable in the doctrines established by the councils of Lateran or Trent.

"Now, Sir, often and often as this question has been brought before Parliament, the same frivolous answer has been returned to the Catholics. The excuse has always been, and for what reason I never could discover, that the *time* was not proper for the discussion of the subject. We are again told, that these claims ought not to be entertained now. I would ask, Sir, whether any man could have anticipated two years ago, that such an answer would have been given to the Catholics this day, under all the consideration of times and circumstances, in which their claims

are brought before Parliament? The excuse which might formerly appear a plausible objection to the discussion, has no longer any foundation. Every thing conspires now to make the time favourable for carrying this question. The temper and conduct of the Catholics is entitled to our confidence and respect. We see them at this moment, notwithstanding the character given of them to the contrary, yielding their opinions to the decisions of Courts of Justice: and, with all their passions and prejudices, roused by the apprehension of some new attack upon their privileges and liberties, yet submitting, with all humility, to that which has been stated to them to be the Law of the Land, and yielding with deference and obedience to all its consequences.

"We have now those very Catholics who have thus submitted themselves calmly to the administration of the law, at the present time petitioning to be admitted to the rights and privileges of British Citizens, with humble submission to your wisdom and your sense of justice. We have not alone the Catholics, coming as humble suitors to your bar, but we have the Protestants of Ireland, themselves (whose apprehensions of danger have always been represented to us to be the great obstacle in the way of the Catholic concessions), now seconding the Petition of their Catholic Brethren, and beseeching you to admit them to the benefits of the Constitution, as the only way you

can give *them* that security which you profess to promise. In opposition to these petitions, you have on the other hand—whom? All the United Kingdom remains in silence. There is not a single dissentient voice to the justice of these claims, save only the Petitions of the Universities of Oxford and Cambridge, and the Corporation of Dublin.

"Notwithstanding the inflammatory Pamphlets and Hand-bills distributed to excite opposition, and to produce resistance to these claims, no opposition has followed, no dissentient voice has been raised, except those I have mentioned, and the voices of the Hon. Gentlemen on the other side of the House. They, in short, are the only obstacles to these concessions. We have the former opinions and promises of the illustrious Person now at the Head of the Government in favour of those concessions,—but his present Ministers are against him, and unless his Friends are mistaken—[*The Speaker here intimated that this was out of order.*]

"We have it *not* now stated" (continued Sir S. Romilly), "as on former occasions, that great scruples are entertained in the highest quarter on this subject, which are wholly unfavourable to the hopes of its success. Upon this question, then, we have the concurrence of all persons and individuals of every description in the Country, except only those I have mentioned; and I will not de-

spair even of the concurrence of many Hon. Gentlemen opposite,—at least, until we have the pleasure of hearing some of them speak. The Noble Lord opposite (Castlereagh) who has always stated, that his former opposition was founded only on the unaptness of the particular occasion, will, I make no doubt, support us upon the present question.

"When we recollect all these circumstances; when we consider that the alarms formerly excited upon the subject of foreign influence, have almost subsided;—when we see Dissenters of all descriptions, and even Protestants of the established Faith, joining in one common voice on this great question; and when we know the fatal consequences of a refusal, I would ask, whether it is politic in the House of Commons, under circumstances so favourable to the question as the present, to tell the Roman Catholics that 'We will not only *not* grant your claims, but we will not even *hear* any thing on this subject. We will not *inquire* whether your claims are ill or well founded: we will not even so much as listen to you.' Depend upon it that the Catholics must be heard. If you do not hear them now, they will come again and again; and every time they appear at your Bar, they will come with increased acquisitions of strength; and that which you might give them with grace and condescension *now*, will ap-

pear to come hereafter from far other motives, than a sense of justice, reason, and good sense.

"If the Right Hon. Gentleman thinks, that holding such language is holding the language of intimidation, he is very much mistaken in the feelings of human nature. If the repetition of complaints brought again and again, after having been rejected with contempt, is to be called the language of force, I know not upon what principle the Right Hon. Gentleman's sense of political justice is founded.

"Sir, thinking as I do, upon this subject,—reflecting on the dangers with which this Country is surrounded, and on the policy as well as the justice of acceding to the prayer of these Petitions, I should not discharge my duty as an honest man, if I did not give my vote for the present question."

The House afterwards divided:

For the Question - - -	215
Against it - - - - - -	300
Majority against it - - -	85

PARLIAMENTARY REFORM.

May 8th, 1812.

The Hon. Thomas Brand moved for leave to bring in a Bill to repeal the Act of the 31st Geo. II. c. 14, and to entitle Copyholders to vote for Knights of the Shire. He also proposed to get rid of nomination, and to throw the Representation of the close Boroughs into an enlarged Representation of the more populous Counties. The Motion was warmly opposed by the Right Hon. William Elliot, the Hon. Mr. Ward, Mr. Davies Giddy, and Lord Milton; and supported by the Marquis of Tavistock, Sir Francis Burdett, the Hon. Mr. Lyttelton, &c. Sir Samuel Romilly said,

"I will detain the House for a very few minutes. After the frequent discussions which this subject has undergone; after the able arguments we have heard in support of the Motion of my Hon. Friend, this night, I have not the presumption to imagine, that I can throw any new light upon it. I cannot, however, refrain from expressing my astonishment, at the manner in which the question has been met by some of the Hon. Gentlemen opposite. From the language which they have made use of, any one unacquainted with the

real circumstances of the case, would have imagined, that the question of a Parliamentary Reform was altogether new to this House, and that it had been now for the first time obtruded upon its attention by the daring spirit of modern innovation. A Noble Lord (Milton) who has recently taken a part in this debate, is particularly strong in his reprobation of this measure. He has expressed himself anxious for an opportunity of coming to close quarters with its advocates, whom he confidently talks of driving into a corner! Good God! is the Noble Lord aware of the names which may be found amongst the supporters of Parliamentary Reform? Or does he think it would have been easy to drive such men as Mr. Fox and Mr. Pitt into a corner? For my own part, I confess, that I have long felt the necessity of Reform in Parliament. I felt this necessity long before I had a seat in this House; and every thing, which I have witnessed since, has served only to confirm me in that opinion. But necessary as this measure has long been, it is more peculiarly necessary at the present moment. It is incumbent upon this, even more than upon any former Parliament, to do something in favour of the Constitution, because we shall not leave the Constitution in the same state in which we found it. The Act of the 49th of the King*, passed os-

* Mr. Curwen's Act.

tensibly for the purpose of preventing the sale of Seats, will materially increase the influence of the Crown in the next Parliament. It will give the Crown a monopoly of those places, which were before open to all parties. This, I have no doubt, was far from being in the contemplation of *all* of the Majority who supported the Bill; but that such must be the inevitable consequence of that Bill, no one, I think, who considers the matter fairly, and lays his hand on his heart, will venture to deny. I even believe that the Bill has already produced its effect, and that many of the votes of this House may be now traced to it.

"An honourable Friend of mine has deprecated the period chosen for entering on this subject. Why should we, he asks, disturb such a period of national prosperity as the present, by inquiries and discussions of this nature? Perhaps this prosperity is not quite so evident as he seems to suppose. A nation groaning under the weight of its taxes, with a distressed trade, increasing pauperism, and an excess of paper money, can scarcely be said to present that smiling picture, which the imagination of my Hon. Friend has suggested. But this is an argument which has been urged against every Reform under every species of government. Lord Clarendon states, that the Country never enjoyed such prosperity as in 1640, and yet that was a period immediately an-

tecedent to the Civil Wars,—when the Nation was not only labouring under taxes levied without authority of Parliament, but was attempted to be chained down by the most arbitrary decisions that ever disgraced the Courts of Judicature.

"But if the present is an unfit time for entering on Reform,—if what is deemed a period of prosperity is improper, what more seasonable opportunity would Gentlemen propose? We know the objections which have been so repeatedly urged on their part against entertaining any subject of this nature in times of popular commotion or distress. We are now told that a period of prosperity and contentment is equally unsuited. When, therefore, will the favourable hour arrive?

"With respect to the particular plan of my Hon. Friend who has brought forward this Motion, it has, as far as I have been able to consider it, my perfect concurrence. The present system of Borough Election is notoriously defective and unequal, and cannot but be materially improved by the proposed measure, which promises to be at once, both temperate and efficient. As to Copyholders, the cause which originally prevailed to exclude them from the enjoyment of the elective franchise, has long ceased. They have now an equal security in their property with Freeholders, and are equally entitled to the right of voting. I shall detain the House no

longer, than to repeat my approbation of the present Motion, which, in my opinion, tends to repair those mischiefs which time will occasion in the best institutions, and to make this House in fact, what it has always been in theory, the Representative of the People."

The House divided, when the numbers were—

Ayes - - - - - -	88
Noes - - - - - -	215
Majority - - -	127

VICE-CHANCELLOR'S BILL.

February 11th, 1813.

Lord Castlereagh moved the second reading of the Bill for appointing a Vice-Chancellor. It was opposed by Sir Samuel Romilly, who expressed his opinions upon it to the following effect:—"On a question of this important nature,—on a project, which, if adopted, will effect a complete alteration in one of the highest of our judicial Establishments, I cannot content myself with giving a silent vote. Although I admit, and although every one must admit, the existence and the mag-

nitude of the evil complained of, I can by no means concur in the present measure, which is even more pernicious than the grievance which it purports to redress. The evil which now exists, however serious, is only temporary, whilst that, which must inevitably result from the proposed remedy, will, in all probability, be permanent. But what is the necessity for this measure? Or why have not the means which already exist for counteracting the evil been first resorted to?—Although the arrears of business have been long growing upon the House of Lords, they have taken no steps for removing the evil. They have *neither met earlier, nor continued their sittings longer* than they would have done had every thing been proceeding in its ordinary course. It is said, indeed, that the Lord Chancellor is unable, consistently with his other duties, to preside at such sittings. But is there no one to supply his place? Surely among the Noble and Learned Lords, who have held the seals either of England or Ireland, some one might be found to perform this duty. The House of Lords is seldom without Members who have filled one or other of those high stations; and whoever is qualified for them, is qualified, whether Chancellor or not, to preside over the House of Lords in its judicial capacity. This was the practice of that House in former times, and may again be resorted to with equal advantage. As for the absence of the Chancellor,—far from

considering it an evil, I am of opinion that there are many causes, which, upon principle, might be better decided in his absence than in his presence, because they are appeals from his own decrees. Yet even these remain undecided, and an Act is to be passed to enable the Chancellor to sit upon them!

"But the question now under our consideration, is not whether any other remedy can be devised, but what will be the probable consequence of the one which has been proposed. That it will be the means of introducing a material alteration not only in the legal constitution of the Country, but in the character of all future Lord Chancellors, can scarcely be doubted. Divested of those functions which have hitherto been considered as the most essential to it, the office of Chancellor will degenerate from one of a *legal*, into one of altogether a *political* nature; and I fear that the time may not be far distant, when the art of dexterously conducting a Court intrigue, or, at best, of skilfully managing a debate, will be perhaps a stronger recommendation to preferment, than all the integrity and attainments of a Somers or a Hardwicke. As to the great increase of business in Chancery, which has been so much spoken of, and which is the supposed justification of the present measure, I doubt the fact. I do not believe, that the business, strictly so called, of the Court of Chancery, has increased

since the year 1750. The number of suits is not now greater than in the time of Lord Hardwicke, though they are perhaps heard at greater length. There may possibly have been less indulgence, or, as I might say, less invitation to frequent hearings and re-hearings than at the present day. Neither has the number of motions very much increased, although more time is now taken up in the arguments upon them than formerly. The only great increase to be found is in the cases of Bankruptcy.

"It may perhaps appear extraordinary, that there should have been no arrears of business in the time of Lord Hardwicke; but the persevering industry and decision of that great Lawyer, enabled him to surmount every thing. Besides his morning sittings, he was in the habit of hearing causes two evenings in every week. Instead of closing his sittings at two o'clock in the afternoon, he frequently prolonged them to that hour in the morning. I have already stated, that the number of Bankruptcy Petitions has increased, and if I was called upon to suggest a remedy, I should say, that one of the least objectionable, would be to separate this business from that of the Chancery. It is said, indeed, that as many of the Bankrupt Cases involve points of great difficulty and importance; and as the decision is to be final, and without appeal, it is absolutely necessary that the Lord Chancellor should determine them himself. I cannot allow the justice of this conclusion. If

they are cases of difficulty and importance, they should certainly be decided by a man of ability; but I see no necessity that this man should be the Lord Chancellor. Others may be found, of the highest professional eminence, and perfectly competent to this duty.

"Another remedy for the evil complained of, and a remedy of a far less objectionable nature than the measure now proposed, would be to separate the office of Speaker of the House of Lords from that of Chancellor. The Chancellorship of the Duchy of Lancaster might also be made an efficient situation. I know that the present possessor of it (Mr. Bathurst) was eminent in the profession of the Law whilst he practised it, and I do not see why the place may not in future be given to professional men, with duties annexed to it. As to the nature of the office, which is now proposed to be created, it is perhaps unlike any other that has ever existed. It totally differs from that of the Master of the Rolls, or of the Judges, sitting under a Commission in the place of the Chancellor. *They* hear and determine all causes which come before them, whether important or not, whilst this new Judge is to undergo the indignity of being forbidden to determine any case of difficulty or importance. As the office of Vice-Chancellor is to continue for life, while that of Lord Chancellor is at the pleasure of the Crown, it may even happen, that the individuals filling these situations, may have been political adver-

saries,—may have been long personally opposed to each other. The Chancellor may entertain the most unreasonable prejudices against the Vice-Chancellor. It is well known that Lord Thurlow had such a prejudice against the Master of the Rolls (Lord Alvanley, than whom there has seldom been a better Equity Judge), that he would never allow him to sit in his place. Such things may happen again, and instead of that mutual agreement and concord subsisting between these great Law Officers, which would tend to the despatch of business, a state of things may arise, from which increased and protracted litigation can alone ensue.

"But the most serious evil to be apprehended from this Bill, is that to which I at first adverted, and to which I must again request the attention of the House. With the temptations to relax from his labours, which will be afforded to the Chancellor, when he shall find a Deputy to supply his place in the Court of Equity, he will gradually become a *political*, rather than a *judicial*, officer. He will be a stranger to his own Court. He will cease to reside in that part of the town where the Professors of the Law are to be found. He will become an inhabitant of the political part of the Metropolis. But will such be the person best calculated for the duties of that high situation? No;—the man filling the office of Chancellor, ought to be one deeply versed in the law of real

Property,—a knowledge only to be acquired and retained by the severest study, and most uninterrupted practice. He should be a perfect master of the rules of equity,—rules not laid down in any statutes, but to be collected from the decisions of his predecessors, and only to be kept alive in his mind by habitual and unceasing exercise. He should be acquainted with the character and merits of all who practise the Law, for in his hands is vested the power of appointment to its highest offices. The Master of the Rolls, the twelve Judges, the King's Counsel, and the Commissioners of Bankrupts, are, for the most part, nominated on his recommendation. Ought a power like this to be placed in the hands of a man ignorant of the Court of Chancery, and without any practical knowledge to assist him either in expediting its business, or correcting its abuses?—of some hackneyed Politician, or Court Intriguer, despising rules and doctrines to which he is himself a stranger, and only bent on rendering the patronage of his high office subservient to the interests of his Party? This will not be the case in the time of the Noble Lord who now holds the Seals. It may not occur in the time of his Successor; but it will sooner or later occur. It is the necessary consequence of this measure which will be felt by posterity, when the views of its authors and its opponents shall be alike forgotten."

After some farther observations, Sir Samuel Romilly concluded, by expressing, in the strongest

manner, his objections to the proposed measure, which he considered as infinitely more mischievous than the evils it pretended to remove. It would fail altogether in its object, and could only tend to enhance the expense of suits,—to multiply appeals, and to protract the final decision of causes. Without resorting to any such alteration in our judicial Establishments, there existed, he thought, a remedy at once simple and obvious. It was the remedy resorted to by all inferior Tribunals, when pressed with an unusual load of business, and was equally applicable, under similar circumstances, to the House of Lords. That Body had only to devote in every Session a larger portion of its time to the hearing of appeals than it was then in the habit of doing. Even if this should be thought insufficient, there were still other remedies far preferable to the one which had been proposed. The Bankruptcy cases, he repeated, might be separated from the other business of Chancery, or the Chancellor might be relieved from a part of his duties in the House of Lords. Either of these measures would, in his opinion, be more effectual, than the project which had been submitted to the House.

The Bill was then read a second time.

On the 15th of February, the Bill was again brought before the House, when Sir Samuel Romilly renewed his objections to it, and alluded to an arrangement suggested by his Hon. and Learned

Friend (Mr. Leach), by which the Bankruptcies should be transferred to the Master of the Rolls, who was to be relieved in his duties at the Cockpit by the Chief Baron. In this plan there was no innovation on any of our Judicial Establishments. It only called into action those means which, though dormant, were still vested in them.

The business of the Cockpit had been said to belong peculiarly to the Master of the Rolls. The fact however was, that before the time of Lord Kenyon, no Master of the Rolls had ever exercised such a function. It was extraordinary, that out of so many Privy Counsellors, who had filled the great offices of State, and several of whom were in the receipt of large sums of the public money, none could be found to attend the judicial business of the Cockpit. There were many, who, from their education, professional habits, and experience, might render most important assistance. The Chancellor of the Duchy of Lancaster was frequently an eminent Lawyer. Yet neither that officer, nor any of the other one hundred and twenty Privy Counsellors (except the Master of the Rolls), performed the duty in question. Why should the Master of the Rolls be taken from his usual occupations to undergo labours, for which so many Privy Counsellors might be found competent? The time which was now devoted by him to Plantation causes and Prize appeals, might then be employed in assisting the Lord Chancellor.

It was an error to suppose, that only trifling

causes were decided by the Master of the Rolls. Many of them were of the most complicated nature, and required the maturest deliberation. The case indeed had been different in the time of former Chancellors. Twice as many causes had been heard in the Rolls during the time of the present Master, as during that of any of his Predecessors. A great deal of business had of late years been transferred from the Chancellor to the Master; and in that proportion the former had been relieved.

As to the argument which had been used, that the eyes of the public would be on the Court of Chancery, and that thus the evil arising from the absence of the Chancellor, on political business, would be prevented by public jealousy, nothing could be more futile. Who composed the public here alluded to? Was it to be supposed, that the Counsel or Solicitors of the Court would complain of the absence of the Chancellor during four days instead of three?—during five days instead of four? It must be obvious, that the evil would grow to a monstrous magnitude, before any such complaint would be made.

The Bankrupt causes, of which it had been proposed to strip the Chancellor, had been said on the other side of the House to be essential to his office. Sir Samuel Romilly considered them rather as a modern excrescence on the office. The first appeal to the Court of Chancery on the sub-

ject, was in the time of Lord Nottingham, who hesitated for some time to entertain the case, stating, as a reason against it, the possibility of those inconveniencies which have since arisen. He at last consented, and was the first to exercise this jurisdiction. Interferences, however, of this kind were for a long time very rare: Not twenty had taken place before the time of Lord Hardwicke, when the number was suddenly increased in consequence of the Statute 5 George II. It was from that period only that Bankrupt causes came exclusively before the Lord Chancellor. It could not, therefore, he thought, be an innovation to detach from that office a burden which had been so lately entailed upon it.

Sir Samuel Romilly then adverted to the salary which had been proposed for the Vice-Chancellor. It ought not to be inadequate to his labours. In all judicial situations, the recompense should be such, as to induce men of talent and eminence at the Bar to accept them. As to what had been said concerning the propriety of permitting the new Judge to sit in Parliament, he (Sir S. Romilly) thought it would be a great benefit to the public, if no judicial officers had seats in Parliament,—no Masters in Chancery,—and no Welsh Judges. A Judge was generally the worse Judge for being a Member of Parliament,—the worse Member of Parliament for being a Judge. The Lord Chancellor had recently stipulated with

some Gentlemen before he admitted them to be Masters in Chancery, that they should not become Members of Parliament.

CRIMINAL LAW.

February 17th, 1813.

"I HOPE" (said Sir Samuel Romilly), "that in again drawing the attention of the House to a part of the general laws of the Country, which I have already on a former occasion brought under its notice, I shall not be considered guilty of any impropriety. The Bill which I at present mean to introduce, is one which has twice passed this House, but has been rejected by the House of Lords. No person has more respect for the quarter from which the opposition has come, than myself. No person would feel more concern than I should, at being supposed to act with the least disrespect towards that quarter. But from all that I have observed since the last consideration of the subject, I feel that I should not be doing my duty if I did not bring it under the attention of a new Parliament.

"It will be in the recollection of the House,

that in 1810, I had proposed to bring in three Bills; one of which was to repeal the Act of King William, which rendered it a capital offence to steal property to the amount of five shillings privately in a shop;—another, to repeal the Act of Queen Anne, which pronounced it a capital offence to steal to the value of forty shillings in a dwelling-house;—and the third, to repeal the Act of George II. rendering it a capital offence to steal property to the same amount, from on board a vessel on a navigable river. These Bills were all passed in 1811, by this House, but were rejected by the Lords. At the present moment, I shall only move for leave to bring in that one, which, in the former discussions that took place, was considered least objectionable; I allude to that which relates to stealing property of the value of five shillings in a shop. The principle upon which I shall propose to introduce this Bill, is precisely the same as that which I have before stated, namely, the inexpediency of penal Laws existing, which are not intended to be executed. This inexpediency is strongly demonstrated by the returns of the Criminal Courts for London and Middlesex, during the years 1805, 6, 7, 8, and 9. I cannot help here expressing my surprise, that these returns have not, in compliance with the order of the House, been continued to a later period. During these few years it appears, that the number of individuals committed for this offence,

amounted to 188, of whom 18 only have been convicted, and not one executed. This, I trust, will be admitted as a tolerably accurate criterion, to show that it is not intended to carry the law into effect against individuals, who are found guilty under the Statute.

"The consequence of the law not being executed, as has been already stated, is, that where some punishment is deserved, none whatever is inflicted, and the offender escapes altogether with impunity. This is an evil which could not exist if the laws were less severe,—if a certain and effective but milder punishment was substituted. I mean not to censure the forbearance which thus disarms the law of its ferocity; but I condemn the retention of a law which is found too cruel for execution, and which is, therefore, superseded in almost every instance, by a discretionary adoption of that wise and humane principle that no unnecessary suffering, no useless pang, ought ever to be inflicted under the sanction of the Legislature. Upon this part of the subject, I cannot more powerfully illustrate my argument, than by quoting the sentiment of a man, who was once the ornament of this House, and whose opinions will have a weight, far greater than belongs to any thing that can fall from so humble an individual as myself. In the observations upon our penal Laws, which are published in the last edition of Mr. Burke's works, that distinguished person says,

'The question is, whether, in a well-constituted Commonwealth, it is wise to retain laws not put in force? A penal law, not ordinarily executed, must be deficient in justice or wisdom, or both. But we are told, that we may trust to the operation of manners to relax the laws. On the contrary, the laws ought to be always in unison with the manners and corroborative of them, otherwise, the effect of both will be lessened. Our passions ought not to be right; and our reason, of which law is the organ, wrong.' The words of this admirable writer were never more applicable than in the present instance; for, without some extraordinary aggravation, who is there, with nerves strong enough to contemplate the execution of this Law? Who will say, that any one, for stealing a riband, or a piece of lace, above the value of five shillings, is deserving of death?

"I do not believe, that there is a single instance, in which the sentence has been carried into execution. If there is any instance, it would be very desirable to know, under what circumstances the offence had been committed, that the aggravations which had been the foundation of the punishment, should in future be made the foundation of the sentence. This would relieve the Judges from that responsibility in deciding on the fate of individuals from their own private judgment, which constitutes the most painful portion of their duty. For my own part, I am satisfied,

that the effect of the law has been to increase the frequency of the crime. Laws, to be effectual, must hold out a terror to individuals. What terror can a law carry with it, when it is known, that it is never put in force, but remains a dead letter on the Statute Book?

"On a former occasion, I stated, that no instance had occurred of the law against stealing to the amount of forty shillings, on navigable canals, having been put in force. Since that period one instance has occurred. It was an aggravated case, in which property had been stolen to the amount of some thousand pounds, and this has been cited against the principle of the Bill for repealing that Act. But can this be considered as a fair ground of objection? Because stealing to the amount of some thousand pounds is punished with death, is that a reason why stealing to the amount of forty shillings should be punished with death? I should, however, have congratulated myself, even if a law had passed to save the lives of those individuals. It is not likely that an instance of so aggravated a nature will soon occur again; and the effect of the execution of the sentence, has been to make persons dissatisfied with the existing law. The trial lasted three days; and the Jury had the fullest opportunity of considering every circumstance of the case. Yet, after their entire conviction of the guilt of the Prisoners, they joined in an unanimous petition to the Prince Regent, to spare the lives of those whom by the law they were bound

to condemn. There cannot be a stronger instance of the general repugnance in men's minds to the carrying of such laws into effect.

"The next Bill which I propose to introduce, relates to the common law punishment in cases of High Treason. The sentence at present, it is well known, is, that the Criminal shall be drawn upon a hurdle to the place of execution;—that he shall be hanged by the neck, and then cut down alive;—that his entrails shall be taken out, and burned, while he is yet alive;—that his head shall be cut off;—that his body shall be divided into four parts;—and that his head and quarters shall be at the King's disposal. In point of fact, this horrible sentence is not now executed, the offender being hanged until dead, and his head being then cut off, and exhibited to the spectators. The practice of embowelling has been discontinued; but it is well worthy of consideration, whether so shocking and ignominious an infliction ought to be left to the discretion of the Executioner. The Judge has not the power of remitting any part of this prescribed judgment; for, in the case of Captain Walcot, who was convicted, in the year 1683, of being concerned in the Rye House Plot, the judgment was set aside upon appeal to the House of Lords, 8 William III. because, although the embowelling and burning had been directed, the words *ipso vivente* had been omitted. These expressions were pronounced

by that high Tribunal to be an essential part of the judgment, without which it had no legal validity whatever.

"It is said, that no Judge was ever known to require that the man's bowels should be burnt while he was alive, and that the execution of such a sentence is impossible. Yet, to maintain such a position, we must reject all the evidence of English History, which every where speaks of such executions. In the cases of General Harrison, and many of those who were executed after the Restoration, the sentence was strictly carried into force. The former, indeed, as tradition informs us, was even able to rise and to strike the Executioner after his body had been opened!—But though such inflictions have ceased to disgrace the Country, ought the possibility of their recurrence to be allowed? Ought such a punishment to remain at this day upon the Statute Book, to revolt the feelings of mankind, and to furnish foreigners with a reproach against our national character? Ought the terrors of a vain threat to be displayed in the hour of the wretched offender's fate, to bereave him of his understanding? Lord Bacon has recorded, that in the time of Elizabeth, these cruelties were generally excused by the example of other countries. But supposing such examples still to exist, are we prepared to admit them as justifications of our conduct in the present day?

"I am ready to admit, that, at later periods, no such horrible exhibitions have taken place, except by accident. The increasing humanity of the age forbids it. Yet who can hear with patience that the infliction of these tortures is still within the power of the Executioner,—that (whilst the Judges have no discretion,—whilst they are bound to pronounce the dreadful sentence of the Law in all its barbarity), the mitigation or the aggravation of the punishment, is left to the care or negligence,—to the tenderness or cruelty of such an individual? On the rigour with which the sentence for High Treason has been enforced, it is horrible to reflect. Camden, in his history of Queen Elizabeth, relates, that in Babington's conspiracy, when fourteen individuals, found guilty of that offence, were left for execution, 'the seven first who suffered were so cruelly tormented,* that the Queen being informed of the severity used in the executions the day before, and detesting such cruelty, gave express orders that these should be used more favourably; and, accordingly, they were permitted to hang till they were quite dead, before they were cut down and bowelled*.'

* The following account is taken from Howel's State Trials:—"Ballard was first executed: he was cut down and bowelled with great cruelty while he was alive. Babington beheld Ballard's execution without being in the least daunted; whilst the rest turned away their faces, and fell to prayers upon their knees. Babington

"Even so late as the year 1746, the most disgusting barbarities were practised in the case of Mr. Townley. After having hung six minutes, he was taken down and laid upon the block, his body still exhibiting signs of life. The Executioner then struck him on the breast, and finding this not sufficient, proceeded to cut his throat. He was afterwards embowelled according to the letter of the law*.

Babington being taken down from the gallows alive too, and ready to be cut up, cried aloud several times in Latin, '*Parce mihi, Domine Jesu!*' Spare me, O Lord, Jesus!—Savage broke the rope, and fell down from the gallows, and was presently seized on by the Executioner, his privities cut off, and his bowels taken out while he was alive. Barnwell, Titchbourne, Tilney, and Abington, were executed with equal cruelty.

"On the next day, Thomas Salisbury, Henry Donn, Edward Jones, John Charnock, John Travers, Robert Gage, and Jerome Bellamy, were drawn to the place of execution. The Queen being informed of the severity used in the execution the day before, and detesting such cruelty, gave express orders that these should be used more favourably; and accordingly, they were permitted to hang, till they were quite dead, before they were cut down and bowelled."—*State Trials, vol. i. page* 1158—1160.

* The following extract is taken from Howel's State Trials:—"The prisoner, Townley, was executed, according to his sentence, on Kennington Common, on Wednesday, the 30th of July 1746. After he had hung six minutes, he was cut down, and having life in him as he lay upon the block to be quartered, the Executioner gave him several blows upon the breast, which not having the effect designed, he immediately cut his throat; after which he cut his head off; then ripped him open, and took

"The origin of this common law judgment I have not been able to trace higher than the reign of Edward I. when David, Prince of Wales, and the celebrated Wallace, were executed, for having bravely and heroically defended the rights and liberties of their country. The Burning, in cases of Petty Treason, long remained a blot on the Statute Book; it has been at length repealed; and blessed, I say, be the memory of the man who procured the abrogation of the dreadful edict!

"Next to this Bill 'for altering the punishment of High Treason,' I would move for leave to bring in another, 'to take away the corruption of blood in cases of Treason and Felony.' This corruption of blood, I wish to observe, is quite distinct from Forfeiture, though frequently confounded with it. The one has always been considered as a punishment inflicted for an offence; the other was never intended as such, but is an accidental consequence of the Feudal Law. It operates, however, as a punishment, not indeed of the guilty, but of the innocent, and that perhaps after the lapse of a century, when the Cul-

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out his bowels and heart, and threw them into a fire, which consumed them; he slashed his four quarters, and put them with the head into a coffin, and they were carried to the new gaol in Southwark, where they were deposited till Saturday, August the 2d, when his head was put on Temple Bar, and his body and limbs buried to be buried."—*State Trials, vol. xviii. p.* 351.

prit and his Crime are both forgotten. By corruption of blood a man is incapacitated not only from inheriting and transmitting property, but even from forming a link in the chain of descent. No title to Lands can be derived through him, however remote the ancestor from whom they may have descended. Collateral Relations in the first or twentieth,—in the nearest and most distant degree of kindred, are alike subject to the effects of this Law.

"I will not occupy the time of the House by anticipating objections to the alteration, which I now propose to introduce. In the view which I have taken of the subject, I am sanctioned by many of our most eminent writers. Sir William Blackstone, in particular, has reprobated the Law relating to *corruption of blood*, as an oppressive relict of Feudal Tenure, which, with all its connected consequences of present escheat and future incapacities, ought now to be abolished and forgotten*."

Sir Samuel Romilly then concluded, by moving for leave to bring in his three Bills, which, after some objections on the part of the Solicitor General and Mr. Frankland, was given.

* Com. vol. iv. p. 388—440.

THE PRINCESS OF WALES.

March 5th, 1813.

Mr. Cochrane Johnstone moved certain Resolutions respecting the conduct of Her Royal Highness the Princess of Wales, and the inquiry into it, which had been instituted in 1806.

After Mr. Whitbread, Lord Castlereagh, and Mr. Canning had spoken, Sir Samuel Romilly rose, and said, "Had the Motion of the Hon. Gentleman been confined to the production of papers, I should not have taken any part in the Debate. There are circumstances connected with the subject, which would make it extremely improper in me to state any opinion upon the conduct of Her Royal Highness the Princess of Wales. But the Motion conveys a strong censure on the proceedings which took place in 1806, and, knowing what I do of those proceedings, I cannot, in justice to the noble persons concerned in them, remain silent; I will, therefore, state (as far as I can do so consistently with the duties of the situation in which I was then placed) the facts which fell within my own personal observation on that occasion.

"In November 1805, I received the commands of the Prince of Wales to attend him at

Carlton House. On waiting upon His Royal Highness, he expressed a desire of consulting me on a matter of great importance to himself, to his family, and to the State; adding, that it was by the advice of Lord Thurlow that he had selected me, and that he had been principally determined in his choice, by the consideration of my being unconnected not only with himself, but with any political party. His Royal Highness then stated the information which he had received, respecting the conduct of the Princess of Wales, and the manner in which it had been communicated to him; and expressed his intention of having every thing put into writing, and laid before me for my opinion and advice.

"Soon afterwards, the written information, with certain other documents, was put into my hands. I considered them with all the attention and anxiety which their great importance demanded; and in a letter which I addressed to His Royal Highness, I stated the impression which they had made on me, with my reasons, at considerable length. After this, I know that the Prince caused means to be taken to ascertain, as far as was possible, the truth or falsehood of the statement which had been made to him; and those means were, as I believe, adopted at the suggestion of Lord Thurlow.

"While these matters were depending, Mr. Pitt died, and a total change took place in the Ad-

ministration. In that change, I was appointed Solicitor General; and some time afterwards I again saw the Prince on the subject of the Princess's conduct, and by His Royal Highness's command, waited on Lord Thurlow, who told me, that he thought the information much too important to be passed over without notice;—that it ought to be communicated to the Ministers; and that, in his opinion, it had already remained too long in the Prince's possession unproceeded on. This message I delivered to the Prince, and immediately, or very shortly after, the matter was communicated to some of the Ministers; and His Majesty was pleased, under his sign manual, to authorize the four Privy Counsellors* who have been named, to inquire into the truth of the representations which had been made, and to report their opinions on them. Several meetings then took place for the examination of the witnesses, at which no person was present besides the four Commissioners and myself. The only office which I had to discharge was, to write down the depositions of the several Witnesses, and to read them over to them before they were signed. For this I was selected in preference to the Attorney General, or to any other person, merely on account of my previous acquaintance with the case; and because it was

* The Lord Chancellor (Erskine), Earl Spencer, Lord Grenville, and Lord Ellenborough.

thought advisable (if the inquiry should not be followed by any judicial or legislative proceeding) that as much secrecy as possible should be observed.

"Having been present at all the examinations except one, when by accident I did not receive the notice*, I am bound, from my own observations, to say, that they were conducted with all the impartiality of Judges acting under the sacred obligations of an Oath. Of the Report which was subsequently made, it would be highly improper for me to say any thing. I cannot state my opinions without adverting to the facts, which, considering the manner in which I became acquainted with them, it is my duty not to publish. Some observations have been made on the opinion afterwards given by the then Attorney and Solicitor General. Of that opinion, I shall only say, that if it did not recommend a prosecution against any of the Witnesses, it certainly was not from any doubt entertained of the authority of the Commissioners to administer an oath, or of the legality of the Commission under which they acted.

"A doubt, however, has been suggested by an Hon. Gentleman upon its legality; and in the letter which the Princess of Wales addressed to the King in 1806, and which the Hon. Gentleman

* The day on which Sir Samuel Romilly was absent, was the 3d of July, when Mrs. Lisle was examined.

ascribed to Lord Eldon, Mr. Perceval, and the present Attorney General, the legality of all the proceedings is called in question. That the Letter was written by those persons I never will believe, until I hear it from the most authentic source. It bears the strongest internal evidence of not having the sanction of such authority.

"The objection, indeed, seems to turn merely upon the form of the instrument under which the Commissioners acted; and yet it is surely impossible to doubt, that upon a representation of misconduct in a member of the Royal Family, involving a charge of High Treason, and presenting all the dangers of a disputed succession, even the King's verbal authority to a number of Privy Counsellors, would be sufficient. The letter complains, that the ordinary modes of inquiry were not resorted to, as if Ministers ought immediately, without endeavouring to investigate the truth of the charges,—without even knowing whether there existed the slightest foundation for them,—to have caused a Bill of Indictment to be preferred to a Grand Jury, and to have kindled a flame from one end of the kingdom to the other.

"The slightest knowledge of our history is sufficient, to leave no doubt as to the frequent recourse which has been had to such inquiries. From the time of Sir John Fenwick, to go no earlier, to the trials of Mr. Horne Tooke and Mr. Hardy, certain members of the Privy Council have al-

ways, upon charges of treason, or treasonable practices, inquired into the truth of the case, before any judicial proceeding was instituted. The legality of such proceedings is indeed recorded by the whole Legislature. The Act passed on occasion of Mr. Harley's life having been attempted while he was sitting as a Privy Counsellor upon such an inquiry, states, that it was while he was in discharge of his duty; but it should seem, according to this objection, that it should have stated that he was acting illegally, and in violation of his duty. That this Committee of the Privy Council consisted only of four persons, can afford no ground for objection. No one will pretend, that, by Law, a larger number is necessary.

"It has been said, that if they could acquit, they must have had a right to condemn; as if an ex parte examination is not sufficient, in all cases, to justify an acquittal; and as if it could, in any case, warrant a condemnation.

"When Margaret Nicholson was seized in a treasonable attempt on the King's life, and when, upon its being ascertained by an inquiry before a Committee of the Privy Council, that she was disordered in her mind, it was decided, that she should not be brought to trial, did any person ever question the legality of the proceedings? Surely, the objection can never have been seriously entertained. It could only have been made to answer the most factious purposes. The inquiry

of 1806, was entirely an ex parte proceeding. It was a proceeding upon which no person could be convicted of any offence, whatever might be the evidence; and as such, I have always understood, it was considered by the Commissioners themselves, though they suggested, that a copy of it should be delivered to the Princess of Wales, to afford Her Royal Highness an opportunity of producing any evidence which she might wish to have examined."

Sir Samuel Romilly concluded with saying, that these matters with respect to the *form* of the Proceeding, he had considered it as much his duty to state, as to be silent on all the other facts connected with the *merits* of the case.

The Question was then put, when Mr. C. Johnstone's Motion was negatived without a division.

On the 17th of March the treatment of the Princess of Wales was again brought before the House of Commons by Mr. Whitbread, who strongly objected to the manner in which Mrs. Lisle had been examined by the Commissioners. Sir Samuel Romilly regretted that he could give no explanation on the subject, not having been present during the examination of that Lady. He was bound, however, in justice to the Lords Commissioners to say, that unless the examination,

on that occasion, had been conducted in a very different manner from that of every other examination, the statement of his Hon. Friend must be incorrect.

The Witnesses had been examined, almost exclusively, by Lords Ellenborough and Erskine; and their *answers* taken down by himself. This, Sir Samuel Romilly said he had done *precisely and literally, in the very words of the Witnesses*, to whom the depositions were then submitted, and who, after reading them, and making any alterations which might be suggested by such perusal, signed the whole. No copies of the evidence were taken by the Noble Lords, and no alteration introduced by them, but the whole original examinations in his (Sir S. Romilly's) hand-writing, were submitted to the Privy Council. The *Questions* put to the different Witnesses had not been taken down in writing.

On the 3d of July, the day of Mrs. Lisle's examination, the Evidence was taken down by one of the Learned Lords; and he must repeat, that, *unless the course then pursued by the Commissioners was altogether different from what it had been on every other day, the statement of his Hon. Friend was incorrect.* How far this was probable, the House would judge. He should only take the liberty of adding, that the Examinations which he had witnessed, were taken with the utmost impartiality, and rather with an inclination to acquit the Princess of the charges brought against her.

CRIMINAL LAW

March 26th, 1813.

Sir Samuel Romilly moved the third reading of the Bill for more effectually preventing the crime of privately stealing in Shops, Warehouses, Coach-houses, and Stables.

The Bill was opposed by the Attorney General, Mr. Wetherell, Mr. Sergeant Best, and Mr. Frankland, who contended, that the test of experience was against all such innovations, and that the reasoning of Dr. Paley in favour of the existing system was unanswerable;—that severity, if it restrained the injured from prosecuting, more frequently deterred the wicked from offending;—that the opinions of the Judges were against the proposed alteration, and that the experiment of milder punishment, which had been made in the case of privately stealing from the person, had not only failed to produce good, but was the cause to which the great increase which was said to have taken place in that species of offence, might be mainly attributed. These arguments were ably combated by Mr. Abercrombie, Mr. Dickenson, Mr. Stephen, and, lastly, by Sir Samuel Romilly, who spoke to the following effect:—

"In rising to reply to some of the arguments which have been urged against this Bill, I shall

not trespass long upon the attention of the House; nor should I have troubled it at all, did I not find it necessary to rise in my own vindication.

"The first of the few, the very few observations, to which I must request your notice, is the frequently preferred accusation of my being desirous, from the restless spirit of innovation, to introduce fanciful and untried theories for grave and salutary practice. I will endeavour, for a moment, to examine what weight is due to this assertion; how much it contains of declamation, and what portion of solid reason.

"The simple question before the House is, whether a Statute that passed in the reign of King William, by which the punishment of death is enacted for stealing, without any circumstances of violence, to the amount of five shillings privately in a shop, ought, or ought not, after the experience of a century, to be repealed?

"From the long and deep-founded conviction, that the existence of the punishment of death for this and similar offences was highly deserving your consideration, I have thought it my duty, as a Member of this House, to submit the question to the wisdom of Parliament; and whatever may be the result of your decision, I cannot think that I shall be censured either by this House, or by the reflecting and intelligent part of the Community. To the Hon. Gentlemen who indulge themselves in the accusation of theory and innovation, who

thus wish us to believe that they are so distinguished for prudence, I might, perhaps, content myself with asking, upon what grounds they claim such pre-eminence in practical sagacity? Why we, who happen to differ from them in our opinions of the beneficial effects of this Penal Law, should be so unmindful of what is due to ourselves and to our Country, as to have proposed or sanctioned an alteration, without a portion of that circumspection which they so deservedly venerate? It may be some satisfaction to those members, whose expressions of attachment to our Constitution and Laws, and of the dangers of innovation, we have this night, for the first time, been so fortunate as to hear, to be informed that these remarks have been repeatedly heard and answered within these walls, not only by assurances that this alteration was not proposed upon any airy untried theory, but by an appeal to indisputable facts which are upon our table; and I cannot but think, that it would have been more satisfactory to the House, if, instead of declaiming by eulogies on facts, and experience, and practical men, and the superiority of practical knowledge over speculation, the Hon. Gentlemen had examined the facts themselves; they would then have learnt, that I was not as unmindful, as they imagine, of the difference between the case of declaiming in support of, or against theory, and the stubbornness of reasoning from facts; and should they, hereafter,

submit to this labour, they will judge whether the epithet of Theorist, which they are so ready to bestow upon me, might not, with more propriety, be applied to themselves. In answer to such charges, I shall only appeal to the House, whether I have attempted to support any measures on theoretical grounds, and whether I have not always endeavoured to recommend them on facts, and nothing but facts, which I have spared no pains in procuring, and putting the House in possession of. These facts are met by declamations against Theory, but without a single fact having been brought forward in justification of the opinions which have been advanced. I cannot, indeed, but regret, that we have not been favoured with the sentiments of my Learned and Hon. Friend (the Solicitor General), whose great experience upon Criminal Law, must have supplied information, which it would have been most gratifying to the House to have heard.

"A Learned and Hon. Friend opposite to me (Mr. Wetherell) has called upon the House to adhere to what he has termed, the Ancient System of our Criminal Law, and for information on that head, has referred the House to a work of Dr. Paley's on Moral Philosophy. In this appeal to the Ancient Criminal Law, my Learned Friend seems to have forgotten, that it is not a part of the Ancient Criminal Law, but an innovation upon that Ancient Law by the Statute of William,

which it is the object of the Bill now before us to repeal. I presume, therefore, that the intention of the Hon. Gentleman is to appeal to this Statute, and, because it is a Statute, to contend that we are, without considering whether its effects have, during the century of its existence, been beneficial or injurious, to object to any alteration. I should have thought this the best test for the regulation of our judgment, as to its continuance or repeal. This, however, is an inquiry, into which my Hon. and Learned Friend has not thought it right to enter; for, without one allusion to the effects of the Law, or to the changes which have been produced by the lapse of time, he requests that this Statute may, if not for its merits, yet from respect to its antiquity, and to the opinion of Dr. Paley, be preserved.

"When my Learned and Hon. Friend speaks with such horror against all Theory, he will, I am sure, be alarmed to think, that he is calling in aid of his reasoning a Work, which has indisputably departed from all fact, and stands solely upon Theory, a very ingenious Theory, but a mere Theory of our Law. This Theory supposes, that when this and other similar Acts were passed, it was not the intention of the Legislature that they should be executed, but that they should stand on the Statute Book merely to terrify, and were to be regulated by judicial discretion. Will my Friend stop for a moment, to see how far this reason-

ing stands upon fact, or upon theory, upon a rock, or upon sand? When this Act passed, Executions were frequent under it; and it continued to be acted upon, from the reign of King William, until a considerable time after his present Majesty's accession. By a reference to Mr. Howard's book, it appears, that the number of persons condemned for shoplifting, larceny in a dwelling-house, and other offences of that nature, from 1749 to 1771, was not less than two hundred and forty: of that number, one hundred and nine, or nearly one half, were executed. On the other hand, within the last five years, in London alone, one hundred and eighty-eight persons have been tried for this offence, of whom only eighteen (one tenth) were convicted, and of the eighteen convicted, not one was executed: How then can my Hon. and Learned Friend, averse as he is from theory,—attached as he is to facts, seriously contend, that the non-execution of the Law is to be traced to this theory of Dr. Paley's, and not to the obvious, unanswered, and unanswerable truth, that from the severe penalties of the Law, your Juries will not convict of the capital offence, and that when a chance conviction takes place, mercy is immediately extended to the offender. In this dilemma the Hon. Gentleman appears to me to be placed, either, that in nine instances out of ten, prosecutors form a deliberate plan to take away the lives of persons, against

whom they have no evidence to adduce; or that they merely follow the law, which the Jury and Court cannot, from its severity, carry into execution. Whether this is to be solved by the severity or humanity of our national character, the House will not have much difficulty in determining. But whatever be the solution, can there be a stronger argument against an existing law, than the fact, that it never will be carried into execution? Unless indeed it is what may follow from this consciousness, the fact, that crimes not only do not decrease, but that they multiply under it.

"It has been said, that the Bill, repealing the punishment of death for privately stealing from the person, has had the effect of increasing the crime. We have been told, that this assertion has been made by very high authority. Where, I ask, is the proof of this increase? If it is a fact, why is not evidence adduced in support of it? Such high authority cannot be necessary to elucidate what is within the reach of the meanest capacity; nor is it probable, that the opinion attributed to that enlightened person, can be traced beyond a communication made to him by some individual, whose time is not so wholly devoted to the discharge of arduous and important public duties. I deny that there is any proof that the crime has increased; but even if it has increased, it remains to be shown, that the alteration of the Law has been the cause. That crimes

in general have increased will be apparent from the returns before the House. The whole number of committals of persons to be tried at the Old Bailey for offences of every description, amounted in the years

1805	to	980
1806	—	890
1807	—	1017
1808	—	1110
1809	—	1242
And in 1810	—	1484

So that, in the last six years, the Committals have increased by nearly six hundred, upon a number somewhat less than nine hundred. To what causes this increase is to be ascribed, whether to the distress of the times, or in a principal degree to the uncertainty of punishment, or rather to the certainty, that no such punishment as that provided for the offence will be inflicted, it is not necessary for me now to inquire. It is sufficient for me to show, that there is no evidence whatever that it is to be attributed to the alteration of the law of Larceny from the person. The authority of Lord Ellenborough has been often referred to upon this part of the subject. It is assumed to be his opinion, that the crime of privately stealing from the person, has increased since the passing of the Bill, by which the punishment of death was taken away. But it should be recollected, that that Noble Lord declared the same opinion in 1808, before the passing of that

Act. I am indeed at a loss to discover, why the authority of the Lord Chief Justice should be singled out on this occasion as higher than any other, except that he has declared this as his opinion, and that the other Judges have not. The Lord Chief Justice does not try so many criminal causes as the other Judges: he goes but one circuit in the year, while the other Judges go two, and he does not sit so frequently at the Old Bailey. High, however, as his authority undoubtedly is, it cannot be decisive with this House, unless the facts, upon which his opinion is founded, are stated and approved.

"I am, however, at a loss to see, how it is possible for any Judge to ascertain precisely and officially, whether the crime has increased or not, because, by the same Act, which took away the capital part of the sentence, this particular description of crime was altogether abolished, and is now included under the same general description of Larcenies from the person. The Judges, indeed, may easily discover, whether the number of prosecutions or convictions for any particular offence increases or diminishes; and the number of prosecutions and convictions for privately stealing from the person, may possibly have increased, since the punishment of death for this offence was abolished. But what is the inference deducible from this fact? Not that the offence has increased, but that as the severity is mitigated, the detections are more frequent, and the punishment more cer-

tain. One object of the Bill was to remove the aversion of persons to prosecute; the increase of prosecution cannot therefore be adduced as a proof of the increase of the crime. Another object of the Law was to remove the aversion of Juries to convict; the increase of convictions cannot, therefore, be adduced as a proof of the increase of the crime.—If any satisfactory general deduction can, in such a short period of time, be formed from these facts, it is, that the effects of the Law have been most beneficial. May I beg the House for a moment to consider the vast difference between the great number of indictments, and the small number of convictions, which formerly took place, and the nearer proportion between the indictments and convictions which is now observable? It appears by returns to the House which are now upon the table, that the indictments and convictions for this crime, since the year 1805, are as follows:—

Year.	Indictments	Convictions.
1805	23	1
1806	31	1
1807	37	3
1808, from Jan. to June,	31	0

"In June 1808, the punishment of death for privately stealing to the amount of twelve pence from the person, was abolished: Such then was the progressive increase of this crime before the passing of that Bill into a law, and so great was

the disproportion between the trials and convictions. Since the passing of that Bill into a law, so different are the results, that out of ninety-five persons indicted last year for larceny from the person generally (for we can only ascertain the fact by this general mode of reference), forty-five were convicted. The reason evidently, and beyond a doubt is, that the Law being less sanguinary, and more proportioned to the offence, Juries no longer hesitate to convict, when there is evidence to prove guilt.

"Let it not then be said, that good results from keeping sanguinary punishments upon our Statute Books solely as threats to intimidate. Instead of good, they are productive of incalculable evil, not only by confounding the gradations of crime, but by preventing the detection and punishment of guilt. It is not, however, from larceny alone that this evil arises. Many other instances may be adduced to show how, in consequence of the severe penalties of our laws with regard to particular offences, crimes multiply, and criminals even for the aggravated degrees of the offence escape with impunity. One daily instance is to be found in the laws against Bankrupts. It is well known to all those who have any thing to do with Bankruptcies, that, to the disgrace of the commercial laws of the Country, no crimes are more frequent than the crimes which the Bankrupt Laws are framed to prevent by the punishment of death. Every merchant in the city

of London knows that they are hourly committed, and committed almost in open day. The cause is obvious. Such is the terrible severity of our law, that scarcely a creditor can be found who will prosecute;—who will risque his peace of mind with the loss of his property. The law has existed for a century. There have been only three convictions under it.—Can there be a doubt that, if these offences were punishable only by transportation, or by imprisonment for a term of years, the offenders would be punished, and the offences diminished? Where then is the boasted benefit resulting from these imaginary terrors of inoperative Laws? What then becomes of this charge of abandoning facts for the adoption of vain and idle theories? If Gentlemen will be at the pains to refer to facts, instead of indulging in vain imaginations, they will soon be convinced how much they err upon this most important subject of the punishment of death. They will soon learn, that this vaunted good to result from this supposed terror, is to be found only in imagination,—that it is purely chimerical.

"As the Gentlemen are so fond of facts, I will, by way of illustration, appeal to one fact, by which they will discover that their mode of reasoning has not the recommendation of novelty, and that the effect of severity in diminishing crime, has been proved, not only in this island, but extends to every part of the globe, where the

kindness of human nature is able to exert itself. In Mr. Barrow's Travels in Africa, that respectable author, speaking of the Cape of Good Hope, says, 'Few die by the hands of justice. In the last eight years, one hundred and ten have been sentenced to death; thirty-eight of whom were publicly executed, and these were chiefly slaves; —the rest were condemned to labour during life at the public works. The confession of a crime, where strong and concurring testimony could not be produced, was sometimes extorted by the torture: and breaking on the wheel was a capital punishment. These were said to be seldom put in practice;—yet at the time they were abolished by order of His Majesty, the Court of Justice urged the necessity of their continuance, as proper engines of terror for preventing the commission of capital crimes, which they thought simple strangling with a cord would be insufficient to effect. Contrary, however, to the opinion of the Court of Justice, there have been fewer executions since the abolition of the rack and torture, than had taken place in an equal period for many years before; so much so indeed, that one of the public Executioners made an application for a pension, in lieu of the emoluments he used to receive for breaking of legs and arms.' *(Hear! hear! hear!)*

"The Learned Sergeant (Best) defends the Statute of King William on the same ground. He too thinks its existence beneficial, because it ope-

rates *in terrorem*. He has told us, indeed, if he were convinced that a single instance had occurred where an individual had suffered unjustly under this Act, he would vote for its repeal. But he contends, at the same time, that if any possible case can be found in which the sentence ought to be executed, this would be a sufficient justification of the Law, as it now stands. There cannot be much difficulty in meeting this reasoning. I will suppose a case of assault so aggravated as to deserve capital punishment, as, for instance, if a son should wantonly and cruelly assault a kind and most indulgent father. Is the Hon. and Learned Gentleman, therefore, prepared to say that he would make an assault capital in all cases whatever? If so, and if he is prepared to follow up the principle, he must bring in an entirely new code of Criminal Laws: and if it will not offend my Hon. Friend near me (Mr. Frankland) to repeat the name once more, I would advise him to inscribe them with the name of Draco. But the Learned Sergeant dislikes all alteration; he would have our laws remain precisely as they now stand in the Statute Book; and he has quoted in support of his opinion, the celebrated maxim, '*Nolumus leges Angliæ mutari.*' But I must beg to remind him when and how those words were first applied. They were made use of by the Barons, when they resisted the attempt of the Crown to overturn the whole system of our laws, and to substitute the old Roman or civil law for

the common law of the land. If this ought to be cited as valid against all alterations in the existing laws, why, then, the Learned Sergeant would have appealed to them when it was first proposed in the time of King William to introduce this Law: or in the time of Queen Mary, when it was proposed to allow witnesses to be examined in favour of the Prisoner; or when it was proposed to extend the benefit of clergy to women as well as men; or when it was determined to abolish reading as the criterion which should preclude capital punishment in certain cases*. Such would have been the effect of applying this maxim at all times, and to all occasions. Such would be the mischievous and absurd consequences of supposing that things ought always to be left as they are! But the Attorney-General, if I understand him rightly, differs from the Learned Sergeant. He says, that something ought to be done, that the crime has increased, and that the Law ought to be altered with a view of meeting that increase. Either, therefore, it must be made more severe or less severe;

* "One demands his Clergy, and the Court took the book and turned him to a verse, and he could not read well, but read one word in one place, and another word in another place: and the Judges asked the Ordinary if he would have him; and he answered, Yea. The Judges bid him consider, and told him the Court was judge of his reading, and if the Court should judge he did not read, the Ordinary should be fined, and the prisoner hanged, notwithstanding his demanding of him; and he was hanged."—*See Kelyng's Reports*, p. 28—51.

and as the Learned Member objects to the latter, I suppose he wishes to have the severity increased. The Learned Sergeant, however, says *No;* he will not touch the Law on any account; he will let the evil multiply and take its own course, sooner than he will agree to any innovation or contradict the opinion of the Judges. With respect to that opinion, I would only wish to have it distinctly understood, that till the year 1771 the Judges themselves acted upon it, and that their present inaction is an innovation of the Law which is no longer any thing more than a theory. The Learned Sergeant has discovered (what was certainly new to me), that there are different ways of pronouncing the sentence of death,—one when the criminal is really to be hanged,—and another when it is intended that he should be respited. I protest I know nothing of these different ways; and as the prisoner must always remain ignorant of any intention to lessen his punishment, the pronunciation of the sentence must have all the effect upon him, which it would have if it were really to be enforced. The only form which I know is, that where the Judge concludes with solemnly pronouncing these words, "*And the Lord have mercy on your soul.*"—I have witnessed the awful and heart-rending effects which the delivery of this sentence has had on criminals; and, in some instances, I have seen the Judge, after the sentence had been pronounced, send to the prisoners, such was their dangerous state, to assure them that the

sentence would not be executed *. I have never seen any instance where this dreadful sentence was pronounced in such a manner as to show that it was a mere form or ceremony, nor can I sufficiently deplore the effects which such a prostitution of it must have upon the Judges, the Criminal, and the Public.

"I cannot conclude what I wish to say upon this subject better than in the words of a Gentleman (the Master of the Rolls), whose absence I sincerely regret; that when 'laws are such as to be no longer executed from their repugnance to the manners and sentiments of the community, the

* The following anecdote was related by Mr. Morris in the Debate of the 29th of March 1811, as a fact of which he himself has been an eye-witness.—"Upon the Home Circuit some years since, a young woman was tried for having stolen to the amount of forty shillings in a dwelling-house. It was her first offence, and was attended with many circumstances of extenuation. The Prosecutor appeared, as he stated, from a sense of duty:—the Witnesses very reluctantly gave their evidence, and the Jury still more reluctantly their verdict of Guilty. It was impossible not to observe the interest excited in the Court. The Judge passed sentence of death,—she instantly fell lifeless at the bar. Lord Kenyon, whose sensibility was not impaired by the sad duties of his office, cried out in great agitation from the Bench, 'I don't mean to hang you: will nobody tell her I don't mean to hang her?'—I then felt (continued Mr. Morris) as I now feel, that this was passing sentence not upon the Prisoner but upon the Law. I ask whether an English Judge ought to be placed in a situation where it is imperative upon him to pass sentence of death when he has not the remotest intention to order the sentence to be carried into execution?"

time is come to repeal them, and to substitute others for them more mild and more effectual.'"

The House then divided, when the numbers were,

For the Bill - - - - - - -	72
Against it - - - - - - -	34
Majority in its favour - - -	38

PUNISHMENT FOR HIGH TREASON.

April 9th, 1813.

The Bill for altering the sentence in cases of High Treason having gone through the Committee after many alterations, Sir Samuel Romilly moved that the Report should then be brought up*. This was strongly resisted by Mr. Frankland, who moved as an Amendment, that the Report be received that day six months. After a warm debate, in which Sir William Garrow, Mr. Fitzgerald, and Mr. Bathurst opposed, and Sir John Newport, Mr. Courtenay, and Mr. Ponsonby supported, the proposed alteration in the Law, Sir Samuel Romilly rose and spoke to the following effect:

"Although in my humble efforts to improve

* Sir Samuel Romilly merely proposed, that in lieu of the old judgment, in cases of High Treason, the offender should be sentenced to be hanged by the neck until he was dead, and that his body should be at the King's disposal.

the Penal Law, I have hitherto uniformly experienced opposition, I cannot but confess, that I feel some disappointment and much mortification at the resistance to the Bill now before us. I had flattered myself, that at least in this one instance, I should have secured your unanimous concurrence. I certainly did not foresee that in an English House of Commons, in the nineteenth century, one voice would have been heard in defence of a law which requires the tearing out of the heart and bowels from the body of a human being, while he is yet alive, and burning them in his sight; and least of all did I anticipate that such barbarity would have been supported by any member of the profession in which I have the honour to be engaged. The Hon. and Learned Solicitor-General, who entered this House with a speech rendered inapplicable by the alteration of the Bill in the Committee, has favoured us with the result of his reflections, and has opposed the whole Bill (although he admits that only a part is objectionable), because he is convinced of the salutary operation of terror, and is averse from change.

"Upon the subject of terror so much has already been said, that I shall content myself with repeating the common answer to this objection:— I shall content myself with saying that it has in all times been adduced by power as a reason for giving a permanent efficacy to the impetuous enactments of ambition, avarice, or revenge. If authority, instead of considering its own will as

the standard of right, would deign to look back and profit, by the experience of past ages; if it would stay for a moment to reflect upon the miseries which have in vain been inflicted by man upon man; if it would inquire what good has resulted from burning, from impaling alive, from the rack, from the wheel, from tearing limb from limb, less reliance would be placed upon these supposed beneficial effects of terror. If terror could have prevented crime, crime would have long since ceased to exist, and sin may now soon be exterminated from the world; for, as human action is prevented by checks, and produced by motives, a system of penal laws in which great punishments are threatened for small crimes must inevitably produce this happy consequence. The Hon. Solicitor, unless restrained by his aversion from change, may form a code by which, the punishment varying inversely as the crime, guilt must soon disappear. I am fearful, however, that notwithstanding these imaginary operations of terror, the beneficial results upon which the Hon. Gentleman may calculate will not be realized. Experience tells us that crimes will exist; and if the Hon. Solicitor will attend to her voice, if he will not despise the homely appearance of truth, because it is to be found in a book of travels, he may learn from the passage which I cited on a former occasion *, and which has this evening been

* See page 456.

repeated by my Hon. Friend (Mr. Ponsonby), that erroneous estimates of the effects of severity are not peculiar to this island. He will learn that the Lawyers and Judges at the Cape, attached as they were to the supposed advantages produced by the terror of their engines of torture, have discovered the well-founded interposition of His Majesty, and, contrary to their expectations, have seen that a relaxation of severity has been attended with a diminution of crime. How, in mentioning this fact, the Hon. and Learned Solicitor-General could venture to assert that it was my wish to impute improper motives to any person, and particularly to my own profession, I am at a loss to conjecture. It would indeed be strange, if I should forget the kindness which I have witnessed during the whole of my professional life, or that I should have been so injudicious as to have chosen this time for such aspersions, when, to assist in bringing in these Bills, I have selected one of my own profession from the many friends by whom I am now surrounded. It would, indeed, be extraordinary if I could be unconscious of their steady support, if I could disregard the strenuous exertions either of my Right Hon. Friend who once filled the highest judicial situation in Ireland (Mr. Ponsonby), or of a Noble Friend in the Upper House, who once filled the same high office in this Country (Lord Erskine). Or does the Hon. Solicitor-General imagine that I, of all men, have forgotten the nervous and argumentative eloquence

of a Right Hon. Gentleman for whose loss to this House there can be but one feeling of regret, and who now presides, with so much honour to himself, and such advantage to his Country, in one of the highest judicial situations in England? (Sir W. Grant.) If the Hon. Solicitor-General had been a member of this House when that Right Hon. Gentleman declared his sentiments with regard to these supposed operations of terror, he would have heard the judgment of a powerful mind accustomed to reflect upon the principles of human nature; he would have heard that 'it is not merely by terror, but by exciting in the Community a sentiment of horror against any particular act, that we can hope to deter offenders from committing it; and although threats may tend to increase the horror when it is in conformity with public sentiment, yet when it is in opposition to such sentiment it may have an opposite tendency.' He might have heard the unanswerable question—'If intimidation will prevent crime, why should not the terror of death attend the most trifling offences? Why stop at the terror of death for any offence?'—As a justification for these charges, the Hon. Solicitor-General has stated that this is the impression produced upon the public mind by the Newspapers, which also contain expressions of dissatisfaction at the votes given by five Bishops against the alteration of the law that awards the punishment of death for pilfering to the amount of

five shillings from a shop. Does the Hon. Gentleman think that I am to be answerable for such Newspaper reports? I saw, indeed, the paragraph respecting the five Bishops; and whatever surprise may have been felt by the person communicating this fact to the public, I saw without any astonishment that the punishment of death for privately stealing to the amount of five shillings had been sanctioned by the support of five Prelates, because upon a former occasion, I recollect, that the punishment of death for this offence was approved and supported by seven of the Bench of Bishops, amongst whom, if I mistake not, there was an Archbishop. The statement, that it was my intention to reflect upon my profession, I have never seen; but from the declaration of the Hon. Gentleman, I take for granted that it exists. I hope, therefore, that the House will not think I am guilty of any improper condescension, when, for the satisfaction of the Hon. Gentleman, I declare that these publications did not directly or indirectly flow from me.

"The Hon. Member who has proposed that this Bill be read this day six months (Mr. Frankland), in commendation of the terror supposed to be excited by the present law, has stated that in England the infliction of pain upon the offender is avoided; and our sentence, without producing suffering in the criminal, is calculated to excite disgust against the crime. Supposing the executioner, in the exercise of his discretion, to disobey

the sentence enacted by the law, and pronounced by the Judge, and that these barbarities are not exhibited until after the death of the Offender, he, indeed, and his family, have only to complain that their minds were tortured,—that he suffered to his last moment with the prospect of the agonies which he was to endure.—But has not society just cause of complaint? Is it not of the very essence of this punishment, that the spectators should suppose that the sufferer is alive? And must not this thought have an inevitable tendency to corrupt and harden their hearts? Is there a Father in this assembly, who would wish his child to be present at such a sad scene?

"The Hon. Solicitor-General has stated, that if it were now for the first time proposed to adopt this law, *his* would be the last consent by which such a cruel sentence should be enacted; but finding it to be a law, he, because he is an enemy to change, will resist any alteration. He will stand upon the old ways; he will tenaciously adhere to precedents without exploring principles, and to judicial enactments without regarding their practical and acknowledged effects; he will be a deliberate and inflexible supporter of the maxim cited a few nights since by a Learned Sergeant (Mr. Sergeant Best), whom I do not now see in his place, '*Nolumus leges Angliæ mutari.*'—Let us not mislead ourselves by trite and sonorous proverbs. Attachment to existing custom may, per-

haps, in general be traced to an opinion of right, with a concomitant but indistinct feeling of utility; and in many cases, it may be of the utmost importance to the well-being of Society. I cannot, therefore, but approve that holy fear which suspects danger and foresees the possibility of mischief in approaching innovation. In this I entirely concur with the Hon. Gentleman. But does he contend that we are not, under any circumstances, to admit any change?—Does he forget, that although novelty, as such, ought to be regarded with suspicion, it ought not, therefore, without qualification and even without inquiry to be rejected? Does he forget, that the very ground upon which we are instructed to make a stand upon the old way, is, that we may look about and discover what is the straight and right way, and, having discovered, that we may walk therein? The Hon. Gentlemen will pardon me, in my turn, for reminding them of the celebrated aphorism, 'that a froward retention of custom is more baneful than innovation; and they who reverence too much old times, are not of most service to the new.' With respect to the maxim cited by the Learned Sergeant, as I cannot suppose that he has forgotten the occasion upon which it was used, I have great difficulty in discovering the propriety of its application to the Bills now before the House. It can scarcely be necessary for me to remind him, that the disputes between the civil and ecclesiastical courts respecting the legitimacy,

and illegitimacy, of children born before marriage, in which the common and canon laws differ, the Prelates were desirous that the municipal law might be rendered conformable to the canon law; it was then that the memorable reply was made by the Nobility, '*Nolumus leges Angliæ mutari.*' But does the Learned Sergeant think that the reply made upon that occasion by the Barons ought upon this occasion to be made by him? Or is he so desirous to generalize, as to think that it is a maxim by which all Legislation is to be regulated, or he will pardon me for adding, annihilated? If this doctrine were to prevail to the extent to which the Learned Serjeant and the Learned Solicitor-General seem desirous to extend it, our laws would, like those of some Eastern nations of which we read, be immutable—nations who were subject to monarchs, whose will was law, and whose laws, in direct contradiction to this supposed property of immutability, were as changeable and oppressive as the will of the lawgivers. Such doctrine would be a perpetual and insurmountable bar to all legislative improvement which society may anticipate, and; if hitherto pursued, would have robbed us of that share of happiness which we now enjoy; for be it remembered, 'WHATEVER NOW IS ESTABLISHMENT, WAS ONCE INNOVATION *.' The nu-

* Preface to a Fragment on Government, p. 16.

merous volumes of remedial statutes, which have been published during the last three centuries ought to be thrown into a pile and burnt, without taking them one by one, with the chance of finding some that might not require to be purified by the flames. If this notable maxim were to be interpreted according to the explanation of the Hon. Gentleman its translation would be, 'Let us cease to legislate,' and the Learned Sergeant and Hon. Solicitor ought, if consistent, to return to their Constituents, and manfully throw up the trust which has been reposed in them.

"But, supposing that this ancient maxim ought to be our guide in these our deliberations, I cannot but express my surprise that it should have been cited by the Learned Sergeant, who, skilled as he is, in the common law of England, cannot have forgotten that this sentence of embowelling alive is not part of that common law to which he is attached, but is itself an innovation. The Learned Sergeant cannot have forgotten the auspicious beginning, in the reign of Edward, of this wholesome severity. It was inflicted when the infliction was not authorized by common law or by Statute, and with the aggravation of falling upon an unfortunate and captive prince. David, Prince of Wales, was the first victim. This unseemly precedent, adopted in the flush and insolence of victory, then assumed the venerable form of law, and fell next upon the undaunted Wallace, who

nobly died in defence of the liberties of his country. He was the second victim. Well might the Learned Sergeant then have exclaimed, '*Nolumus leges Angliæ mutari.*' Well might he then have resisted the encroachments of power upon the authority of common law; well might he for once have found in precedent a direct and sacred plea against the usurpation of cruelty; but now, in defence of severity, he loses sight of common law, and admits, in favour of the ages that have passed, the very plea of innovation which he refuses, when urged in our own age, on the side of mercy!

"I am sure, after all, that upon the general topics of reform much doubt cannot be entertained in this House. But what is the particular subject of this night's inquiry? It is not upon one of those matters of positive regulation where it, possibly, is of less importance what the rule of law is, than that there should be some certain rule; but it is upon a sentence which inflicts a most cruel death, and which disgraces the national character by a savage and disgusting spectacle to those by whom it is witnessed. Such an enemy is the Hon. Gentleman to innovation, that he will retain even these barbarities, because he finds them established. If the Hon. Solicitor had lived some years ago, he would then doubtless have stood forward with the arguments that we

have heard this night in support of those monuments of barbarism which the wisdom of our ancestors has abolished. Amongst such bulwarks of the Constitution, as embowelling alive, he might have supported the 'peine forte et dure,' the writ 'de Hæretico comburendo,' or the burning Women alive for Petit Treason.

"The nature of the Hon. Solicitor's reasoning may be applied with equal force to all of these savage expedients.

"By the ancient law, the judgment for standing mute was, 'that the prisoner be remanded to the prison, from whence he came, and put into a low dark chamber, and there be laid on his back on the bare floor, naked, unless where decency forbids; that there be placed upon his body as great a weight of iron as he could bear;—and more, that he have no sustenance, save only on the first day three morsels of the worst bread, and on the second three draughts of standing water that should be nearest to the prison door; and in this situation, this should be his daily diet till he died, or (as anciently the judgment ran) till he answered.' In the 12th year of His present Majesty's reign our national character was rescued from this just subject of reproach, and the law was abolished. If the Hon. Solicitor had been a Member of this House when the alteration was then proposed, he would have implored you not to remove the landmarks of society; he would have said,

that this operation of terror was most beneficial to the community, and that, although he would have been the last to have introduced this law, he would be the first to continue it.

"The Writ 'de Hæretico comburendo,' which as a practice, has been thought to be as ancient as the common law itself, was abolished in the reign of King Charles the Second. Has the removal of this bulwark endangered the Constitution? Or does the Hon. Solicitor think, that because it was once law, it ought not to have been altered? Or does he believe that any advantage resulted to this Country, or that our national character was exalted by that execrable Writ, which spared neither genius nor piety, the helplessness of childhood, nor the feebleness of old age?

"The punishment for Petit Treason by a Woman, was burning her alive. In the year 1790, this law was altered. Would the Hon. Solicitor then have reminded you of the salutary operations of terror? Would he have talked of the bulwarks of the Constitution; of his being the last man to propose, but the first to preserve, this law?

"As the dread of change is so prevalent, let us congratulate ourselves that the punishment of burning Women alive,—the Writ 'de Hæretico comburendo,'—and the 'peine forte et dure,' are already abolished; for the temper which has ap-

peared,—the reasoning which we have heard this night, would have been as applicable to such exploded barbarities as to embowelling alive.

"The Learned Gentleman has stated, that my Hon. Friend (Mr. Courtenay) is mistaken in supposing that, in the execution, or rather in the evasion of this sentence, any trust is reposed where he cannot but admit that it ought not to be confided, in the executioner; and he with an air of triumph says, we ought not to legislate from the solitary instance of Mr. Townley, which must be solitary, because no other instance has been adduced. The error of this mode of reasoning seemed to be forcibly felt by the Hon. Gentleman, when it was unexpectedly retorted upon him in the conclusive argument of my Right Hon. Friend (Mr. Ponsonby). But if it will be any satisfaction to the Hon. Gentleman, I will remind him of the account which he may find in the State Trials of the execution of John James, where the executioner is stated to have been so civil as not to embowel the offender until he was actually dead *.

"When the sentence is merciless, the sufferings of the offender will, in a state which has made any progress in civilization, be mitigated, if possible, by the executioner. The 'peine forte et dure,' while it existed, was like the punishment

* Howel's State Trials, vol. vi. p. 104.

of treason, a case where it was left to the humanity of the hangman to temper the cruelty of the law; and it was usual for him in the first instance to place such a weight upon the breast of the offender, as to shorten and soon terminate his sufferings. Sir William Blackstone considers these severities so contrary to the genius of our nation, that he says they are never inflicted unless by accident *: and Sir M. Foster mentions one of these accidents, where a Woman † was actually burnt alive. If these instances, which must unavoidably exist from the very constitution of our nature, will not satisfy the Hon. Gentleman, he may, I make no doubt, discover many others, from which he will be convinced, that it is not my Hon. Friend who was mistaken. On former occasions it was contended, that a discretion in inflicting the punishment ought to be taken from the Legislature, and reposed in the Judges. On this night we have heard an extension of this doctrine, and we are now required to trust to the discretion of the Executioner.

"The only remaining topic of the Hon. Gentleman's argument is, his inquiry—whether there ought not to be some distinction between the punishment for such an offence as High Treason, and the punishment for common Felonies. Upon the

* Com. vol. iv. p. 376—7.

† Catherine Hayes convicted at the Old Bailey, April 1726.

answer to this question no doubt can be entertained; but if the Hon. Gentleman, therefore, infers, that embowelling alive ought to be part of the law of England, he will forgive me for saying, that, allowing the truth of his premises, I wholly dissent from his conclusion: I allow that there ought to be a distinction between crimes so widely different; but this distinction ought to be made, *not by the introduction of torture,—not by augmenting the pains for these extreme offences, but by lowering the penalties,—by abolishing the punishment of death for pilfering a few shillings!* It is not one of the least important objections to enacting severe laws for small crimes, that they form a standard of cruelty to justify every harsh and excessive exercise of authority. They are the bloody tests to which constant appeal is made. These laws indeed are represented as unobjectionable, because they are never executed. We are told, that, if they are theoretically severe, they are practically humane. Be it so: but let it be remembered, that on this, as on many other occasions, appeals are made to these laws as a standard for apportioning punishments for other offences. The reasoning of the Hon. Solicitor upon this subject is contained in a tract which was published a year or two after the Bill for inflicting the punishment of death for stealing to the amount of five shillings privately from a shop, passed the Legislature. This tract, entitled, 'Hanging not Punishment

enough,' recommends, that, as malefactors who differed in guilt could not with justice be doomed to the same punishment, torture ought in many, if not in most cases, to be sanctioned by the Legislature. This tract has lately been republished *. It is not, as may be supposed, written ironically; but it is a serious, grave declaration of opinion by an author who follows truth wherever it leads him; and whose conclusions cannot be controverted, if his premises are allowed. He may reason 'well as a logician, but very badly as a man.'

"With respect to this not being the fit time for an alteration of the laws, I do not think it proper to trespass on the attention of the House with a single observation. I could not, however, sit down without calling upon you to remember before we divide,—before you say, 'This law ought to remain upon our Statute Book,' that His Majesty's law officer has declared that such a law ought never to have had existence:—I call upon you to remember, that cruel punishments have an inevitable tendency to produce cruelty in the people. It is not by the destruction of tenderness,—it is not by exciting revenge, that we can hope to generate virtuous conduct in those who are confided to our care. You may cut out the heart of a sufferer and hold it up to the view of the populace, and you

* By Basil Montagu, Esq. in the 3d volume of "Opinions on the Punishment of Death."

may imagine that you serve the community; but the real effect of such scenes is to torture the compassionate and to harden the obdurate. In times of tranquillity you will not diminish offences by rendering guilt callous,—by teaching the subjects to look with indifference upon human suffering; and, in times of turbulence, fury will retaliate the cruelties which it has been accustomed to behold. From the spirit which I have seen, I shall not be surprised, and I certainly will not be deterred, by any vote of this night. I am not so unacquainted with the nature of prejudice as not to have observed that it strikes deep root; that it flourishes in all soils, and spreads its branches in every direction. I have observed also, that, flourish as it may, it must, by laws sacred and immutable, wither and decay after the powerful and repeated touch of truth. It was my lot to hear in Parliament a negative upon that Bill which was intended to deliver this enlightened nation from the reproach of the cruel and disgusting punishment of burning Women alive. It was my lot again and again to witness in this House the defeat of those wise and humane exertions which were intended to rescue Englishmen from the disgrace of abetting slavery. But the punishment of burning is no more, and Africa is free. No resistance, no vote of this night, shall prevent my again appealing to the good sense and good feeling of the Legislature and of the Country. If I live another year, I will renew

this Bill, with the Bill for repealing the punishment of death for stealing a few shillings; and, whatever may be my fate, the seed which is scattered has not fallen upon stony ground."

The House divided:

For the Bill - - - - - - -	60
Against it - - - - - - -	73
Majority against the Bill - -	13

ECCLESIASTICAL COURTS.

May 31st, 1813.

The Order of the day being read for going into a Committee on the Bill for the better regulation of Ecclesiastical Courts in England, and for the more easy recovery of Church Rates and Tithes;

Sir Samuel Romilly expressed his disappointment at the measure, which had been so altered as to offer no security against any of the evils attendant upon the power of excommunication in inferior Courts, and which was, therefore, wholly inadequate to its proposed object. He could see no reason why spiritual Courts should take any cognizance in matters of defamation. He knew that great abuses existed in this part of their jurisdic-

tion. The law was in fact such, that the Judge, however correct his intentions, had in many cases no alternative but to pronounce an exceptionable decision. Thus, should a man venture to describe some abandoned woman in the terms she deserved, and as it might possibly be necessary for him to do (for instance, in a case of Bankruptcy, where the prodigality of such a woman might be the principal cause of the failure), he would be liable to the visitation of the ecclesiastical law for defamation, and it would avail nothing to the accused to prove, or to be able to prove, the justice of the accusation. In fact, the justification of the Judge in these cases consisted in the condemnation of the law.

Sir Samuel Romilly concluded with declaring, that it would have been a great public benefit if the Bill had gone so far as to abolish the jurisdiction of spiritual Courts in cases of defamation altogether. The trouble, the expense, the injustice attending such cases in their progress through those Courts were so great as fully to justify such a proposition.

The House then resolved itself into a Committee, when Sir Samuel Romilly proposed two new clauses; one enacting that no person should be appointed a Judge of any Consistorial Court, who had not practised as an Advocate in the Court of Arches, or who (if a Barrister) had not practised three years in the Courts of Westminster,

Hall;—and the other, that after the passing of the said Bill, no action nor suit for Tithes should be brought or instituted in any Civil Court, unless commenced within six years after such Tithes should have become due. The two clauses were agreed to.

THE END OF VOLUME THE FIRST.

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